

No. 12766

---

United States  
Court of Appeals  
for the Ninth Circuit.

---

JOHN URQUHART BIRNIE, an Individual Doing Business as Birnie Electric Company, and MASSACHUSETTS BONDING AND INSURANCE COMPANY, a Corporation,

Appellants,

vs.

THE PERMANENTE METALS CORPORATION, a Corporation, and UNITED STATES MARITIME COMMISSION,

Appellees.

---

Transcript of Record  
In Three Volumes  
Volume II  
(Pages 289 to 594)

---

Appeal from the United States District Court,  
Northern District of California,  
Southern Division.

FILED  
APR 24 1951

SHIEN,  
OLEAK



No. 12766

---

United States  
Court of Appeals  
for the Ninth Circuit.

---

JOHN URQUHART BIRNIE, an Individual Doing Business as Birnie Electric Company, and MASSACHUSETTS BONDING AND INSURANCE COMPANY, a Corporation,

Appellants,

vs.

THE PERMANENTE METALS CORPORATION, a Corporation, and UNITED STATES MARITIME COMMISSION,

Appellees.

---

Transcript of Record  
In Three Volumes  
Volume II  
(Pages 289 to 594)

---

Appeal from the United States District Court,  
Northern District of California,  
Southern Division.





(Testimony of Herman Barter.)

Q. The designation "VC-2-S-AP5," that is a Maritime Commission designation, is it not?

A. Oh, yes.

Q. Prepared by the Maritime Commission, rather than the Navy? A. Yes.

Q. Do you personally know what the Maritime Commission AP-5 meant?

A. A means auxiliary, P means personnel; the combination is usually referred to as transport, and the 5 purely—all I ever knew that it meant that they had used 1, 2, 3, 4 prior to these vessels, and when they were building these for the Navy, to be used by the Navy, to be built for combative transports, 5 was the next number that had not been used for the AP's, and they used that purely as if drawing a corresponding [89] designation, I imagine.

Q. Commander, in answering as to the meaning of APA, is it not true you have just given me the Naval meaning of it, rather than what the Maritime Commission meant by it?

A. Well, you are probably correct. AP really means transport, AP, auxiliary personnel——

Q. You don't personally know what the Maritime Commission meant by that designation, do you?

A. On the AP that is correct.

Q. Now, you mentioned a Mr. Wanless. Is that Ivan Wanless of the United States Maritime Commission, Preliminary Design Section?

A. I don't know him by the name of Ivan, but it was Mr. Wanless in the design of Maritime Commission billeted in Washington, yes.

(Testimony of Herman Barter.)

Q. He worked with you, did he, in designing these Victory cargo ships the Maritime Commission would change to meet requirements?

A. I don't believe he worked with us. Admiral Vickery came over—I was also a member of the Auxiliary Vessels Board—going back here for the four years—which you probably know was the board that cleared for the Navy the taking over of any ships for naval use or setting up requirements, and the legal machinery for either building auxiliary vessels or vessels of that type, and Admiral Vickery was over at that [90] board meeting, I am quite sure, when it was decided that these ships would be the ones that would be built for combat transports, and I recall that was—oh, probably somewhere around the 10th of October, 1943, Admiral Vickery went back, I am sure, and started the work on the preliminary designing of what had to be done, and I believe I met Mr. Wanless or with Mr. Wanless about the 30th of October, 1943.

Mr. Walkup: I move that the part of the answer be stricken, anything other than as to Mr. Wanless. The question was whether or not he worked with Mr. Wanless on working out the features of this vessel.

The Court: Motion denied.

A. We told Mr. Wanless what we wanted; Mr. Wanless had his draftsman prepared as soon as possible to meet what he thought we needed.

Q. (By Mr. Walkup): Is it not true that in working with Mr. Wanless you had in mind the

(Testimony of Herman Barter.)

return of these vessels after the war to cargo-carrying functions and accordingly in any changes that were made the modifications were kept to a minimum so as not to destroy the value of the vessels for rehabilitation to a cargo vessel when the Navy had finished with the vessels?

A. That wasn't my memory, no, sir. I can give you the biggest that you probably are referring to, which I believe was the Baxter out of Baltimore, as an example that we converted during this war under the same line of requirements, but we did not [91] hold it to these vessels. I don't recall in Baltimore of ships that were built like that the Navy had to take any conversion features—I had one ship where to maintain what you are talking about they wanted to put one-fourth of the embarked troops below decks, so far below decks that the ship's refrigeration was the deck above, and before the ships were even completed or the refrigeration was in—they wanted to put the refrigeration in the decks below and the troops above that, and the chief of Naval operations specified that no troops be put in that deck even if that area had to be carried as a void and another cargo hold, higher hold, would be used to accommodate the additional troops.

I do know that at certain times that was one of the things we had to contend with, but I have no knowledge of any necessity of that on these ships, because, as I said before, they were the 1945 model,

(Testimony of Herman Barter,)

and we got into the ships the things that made these the ideal combat ships for the forces afloat.

Q. Your answer somewhat answers my question. In other words, is it not a fact there was some friction between the Maritime Commission and the Navy because the Maritime Commission wanted to keep these vessels readily convertible to cargo vessels after the war and the Navy was primarily concerned in getting naval features in them for the war period?

A. The vessels under consideration as a part of this suit I would say no. I gave you the story on the other vessel [92] which was in the 90 class—either the 90, 91 or 92, but I am saying as far as these particular vessels are concerned I would say no. I recall no controversy or anything of the sort in reaching the features in them. Of course, the engine room was placed in the same place and the basic machinery, the basic hull was the same, that is correct.

Q. But as far as your personal knowledge goes you recall no such dissension between the Navy and the Maritime Commission?

A. On these particular vessels, no. We had it on plenty of them, and we had it, as I say, when you want to put one-fourth of the troops in space four decks down.

The Court: You have told us about that.

Q. (By Mr. Walkup): Commander, now it is true, is it not, that all vessels constructed after 1941



(Testimony of Herman Barter.)

had a degausse system on them by the Maritime Commission?

A. I think the degausse went in in the spring of 1941, wasn't it, or the latter part of 1940, and any ships going into certain areas certainly had to be degaussed.

Q. Was the degaussing system on ships during wartime kept on a cargo vessel as well as on a naval vessel?

A. Yes, that is correct.

Q. And a voice tube system was standard equipment on a cargo ship as well as a naval ship, was it not?

A. I would say maybe on that. We have got into sound power phones. The voice tubes might be there and might not be there. [93] They cause quite a lot of trouble.

Q. Mechanical telegraph system was a component part of the Victory cargo ships, was it not?

A. Oh, yes, and they had steering wheels to steer them with. That was the same on both ships.

Q. I don't mean to appear to be facetious, Commander, I am referring to specific items of work Mr. Birnie did on these vessels, and his work as shown by the subcontract which I just mentioned relating to installing degaussing system——

A. Yes.

Q. ——which you say was not limited to vessels used only by the Navy.

Installing voice tube, which is a feature of a cargo vessel as well as a naval vessel?

A. Oh, yes.

(Testimony of Herman Barter.)

Mr. Pentz: Just a moment. I wish to object to this line of questioning because it is not material to this case as to whether the particular items that Mr. Birnie furnished were of a naval character. The issue in this case is as to whether or not the vessels themselves were naval vessels, and it is true a naval vessel may have some of its features the same as a commercial vessel, and therefore it is not important as to whether Mr. Birnie's particular items were either naval or not naval. The question is whether the vessels themselves were naval vessels. [94]

The Court: Overruled.

Mr. Walkup: Another item Mr. Birnie was to install was a mechanical telegraph system. It is true, is it not, that the Victory cargo ship with those modifications that your department required has a mechanical telegraph?

A. Every vessel must have a mechanical telegraph, certainly.

Q. Would the same be true as to mechanical wireways?

A. Well, I am not sure if I know what you mean by that. Do you mean the pipe conduits for wires to go through, is that what you mean?

Q. Well, this refers to the wireways, to install same on that vessel, "said fabrication to be done at the contractor's plant." I assume that you would be familiar with the term "wireways" on a vessel, more so than I would.

A. I can tell you this: If it means that wires go

(Testimony of Herman Barter.)

through a conduit, either pipe or a metal conduit for fire protection from shorts, or something like that, I imagine that is standard equipment on any ship, and if that is what you mean that could be on any vessel.

(Recess.)

Mr. Walkup: I have no further questions, your Honor.

Mr. Pentz: No further questions.

The Court: That will be all, then, Commander.

The Witness: Thank you. [95]

Mr. Pentz: Your Honor, at this juncture I propose to introduce a series of letters, correspondence between the Maritime Commission and the Navy Department in the main. I have in my file photo-static duplicates of these letters, duplicates of those that are already in the depositions. I have reference to their particular designators in the depositions, and I presume we might offer these into evidence in a number of ways: I could offer my duplicates as being a part of the record, or I could read them in, or I presume the clerk could take the duplicates and give them the same designators as in the depositions. I would certainly want to pursue the manner you would recommend.

The Court: I have no objection to putting the duplicates in, if you wish.

Mr. Pentz: Very well. That will be the easiest, it seems to me.

The first letter, and for Mr. Walkup's informa-

tion it is designated as Plaintiff's I in the deposition of Messrs. McDonald, Maher & Wanless, taken in Washington by the plaintiff about October 1st, 1947, a letter dated November 9, 1943, signed by William D. Leahy, Admiral, United States Navy, and is addressed to Rear Admiral E. S. Land, Chairman, United States Maritime Commission.

This is the letter which requests the Maritime Commission to construct 130 standard APA's, and I at this time offer that [96] in evidence as Defendant's Exhibit first in order, which I believe would be A, or will it be designated one?

Mr. Walkup: Your Honor, I would like to object to the introduction of that document, and, in order to save time, I could possibly make a class objection to a number of specific documents which I expect to follow, on the ground that this correspondence between the joint chiefs of staff and the Maritime Commission, or between the representatives of the Navy and the Maritime Commission is entirely incompetent, irrelevant, and immaterial, and that the court is faced here with a pure question of law as to whether or not these particular vessels were vessels constructed under the Vinson-Trammell Act, as that act has been interpreted by the Court decisions, by the regulations thereunder, and has been fully briefed in our pre-trial statement of position, the point was made in the pre-trial statement of position that objection would be made at the trial to these documents on that ground.

If the Court is willing and counsel is willing, instead of objecting to each of these letters as offered,



I make the running objection now to any of the series of letters or correspondence between the Joint Chiefs of Staff and the Navy and the Maritime Commission which counsel is about to offer as entirely incompetent, irrelevant, and immaterial.

The Court: It may be understood you have a running objection to this line of exhibits which are about to be [97] offered.

(The document referred to was marked Defendant's Exhibit Number 1.)

Mr. Mellin: I understand Mr. Walkup's position is not he objects to the fact they are copies——

The Court: No, as to the substance.

Mr. Walkup: That is correct.

Mr. Pentz. The next letter, for counsel's information, is letter designated in the plaintiff's depositions taken in Washington as Plaintiff's Exhibit N. It is dated December 6, 1943, is signed by E. S. Land, Chairman of the Maritime Commission, is addressed to the Secretary of Navy, and refers to Admiral Leahy's letter, Defendant's Exhibit 1, and sets forth the general plan of procuring these vessels, where they are to be built, and other features.

I offer that letter as Defendant's Exhibit 2.

Mr. Collett: If the Court please, I don't want to be guilty of an over-sight here. I would like the record to show——

The Court: Your objection is the same——

Mr. Collett: Yes, in behalf of the United States as the objections that were heretofore made by counsel for Permanente. Likewise, the same objection to run——

The Court: It will be understood.

Mr. Pentz: May it also be understood that these letters as they come in may be deemed to have been read into the record? [98]

The Court: Yes.

(The document last offered in evidence was marked Defendant's Exhibit 2.)

Mr. Pentz: The next letter is designated in Plaintiff's depositions taken in Washington as Exhibit H. It is dated December 10, 1943, it is signed by the Bureau of Ships, Navy Department, to the Chairman, United States Maritime Commission, and in substance acknowledges the receipt of the letter, our Exhibit 2, and notes its contents—takes cognizance of its contents.

I offer that letter as Defendant's Exhibit 3.

(The document referred to was marked Defendant's Exhibit Number 3.)

Mr. Pentz: The next letter is designated in Plaintiff's Washington depositions as Exhibit O. It is a letter dated December 11, 1943, sent by E. S. Land, Chairman, United States Maritime Commission, to the Secretary of Navy, and in that letter certain changes insofar as where the ships are to be built are reported.

That letter I offer as Defendant's Exhibit 4.

(The document referred to was marked Defendant's Exhibit Number 4.)

Mr. Pentz: The next letter is identified in Plaintiff's Washington depositions as Exhibit R. It is

a letter dated February 29, 1944, is signed by the Hon. Frank Knox, Secretary [99] of Navy, and is addressed to the Chairman, United States Maritime Commission, in which the Navy confirms an understanding relative to the receipt of ships.

That letter I offer as Defendant's Exhibit 5.

(The document referred to was marked Defendant's Exhibit Number 5.)

Mr. Pentz: The next letter is identified in Plaintiff's Washington depositions as Exhibit Q. That letter is dated June 3, 1944, is signed by E. S. Land, Chairman of the United States Maritime Commission, and is addressed to the Secretary of Navy. In that letter the Maritime Commission seeks the approval of the United States Navy that the Navy pay for the conversion features of these vessels.

I offer that letter as Defendant's Exhibit 6.

(The document referred to was marked Defendant's Exhibit Number 6.)

Mr. Walkup: Your Honor, in addition to the running objection I have to this testimony, I would not like to have my silence to be deemed as agreeing with counsel's description of these documents. I presume it is more for the convenience of the Court. The documents will speak for themselves.

Mr. Pentz: I almost took that for granted.

(The document referred to was marked Defendant's Exhibit Number 6, as above stated.)

Mr. Pentz: The next letter is identified in Plaintiff's [100] Washington depositions as Plaintiff's

Exhibit U. It is a letter dated July 3d, 1944, sent by the Hon. James Forrestal, Secretary of the Navy, to the Chairman of the United States Maritime Commission, and it in substance accepts the arrangement that the Navy pay for conversion features of these vessels.

I offer that as Defendant's Exhibit 7.

(The document referred to was marked Defendant's Exhibit Number 7.)

Mr. Pentz: The next letter is—was contained in the Defendant's deposition—that is, this deposition taken of Captain McShane in Washington as Exhibit 4, with its attachments 4-A and 4-B. That is a letter dated December 27, 1945, sent by H. Struve Hensel, Assistant Secretary of the Navy, to the Chairman of the United States Maritime Commission, in which the Navy requests that title to the vessels when listed be considered in the Navy without further act or deed, and in the enclosures, the vessels, the subject matter of this litigation, are listed.

I offer that letter as Defendant's Exhibit 8.

Mr. Walkup: If the Court please, I would like to enter a further objection to this particular document and to subsequent documents of the same class. This particular document is dated December 27, 1945. That relates to an agreement worked out between the Navy and the Maritime Commission some years after these vessels were actually constructed, and it [101] had nothing whatsoever to do with any arrangements in effect at the time the vessels were constructed.



What that boils down to, so the purpose of the objection will be clear, is that there was a series of negotiations between the Navy and the Maritime Commission as to the postwar disposal of the entire supply, and as this document and others of the same class which will be offered will show, the Maritime Commission wanted some vessels back, the Navy was willing to give certain vessels back, and as a matter of bargaining, as I read the documents, this arrangement for transfer of title of some of the vessels involved in this action to the Navy was worked out, but it was not in contemplation at any time that Mr. Birnie had anything to do with the performance of this sub-contract for Permanente Metals Corporation.

So, therefore, in addition to the other grounds previously stated as to such correspondence that it is incompetent, irrelevant, and immaterial, I want to point out that because of the date of this subsequent correspondence and acts after the fact—we will make a further objection on that ground, that these, if the others were material, certainly would not be.

The Court: Overruled.

(The document referred to was marked Defendant's Exhibit Number 8.) [102]

Mr. Mellin: Mr. Pentz, Defendant's 8 includes 4-A and 4-B.

Mr. Pentz: Oh, yes. May the record show that the document I have introduced as Defendant's Exhibit 8 includes the enclosures as identified in De-

fendant's Exhibit of Captain McShane as 4-A and 4-B. In other words, 4-A and 4-B in the deposition are included in Exhibit 8.

The next letter is identified in the Defendant's Captain McShane deposition taken in Washington as Defendant's Exhibit 5, and it is a letter signed by E. S. Land, Chairman of the Maritime Commission, addressed to the Hon. James Forrestal, Secretary of the Navy, wherein the request of the Secretary of the Navy in Defendant's Exhibit 8, as regards title to these vessels is accepted.

Mr. Walkup: I make the same objection here as to Defendant's Exhibit 8, your Honor.

The Court: Same ruling.

Mr. Pentz: I offer the letter as just described as Defendant's Exhibit 9.

(The document referred to was marked Defendant's Exhibit Number 9.)

Mr. Pentz: The next letter is identified in Captain McShane's deposition in Washington as Exhibit 3. It is a letter dated January 23, 1946, from the Chief of Naval Operations, United States Navy, to all bureaus and officers, Navy Department, [103] in which all bureaus and officers of the Navy Department are instructed to have their records reveal that the vessels in this litigation are Navy owned.

Mr. Walkup: I make the same——

Mr. Pentz: Might I just ask this, Mr. Walkup: That as an attachment to that letter just described is a list of our vessels in this lawsuit identified in Captain McShane's deposition as 3-A, and I would

like to have the record show that this letter will be deemed to include both 3 and 3-a of Captain McShane's deposition.

Mr. Walkup: I make the same objection.

Mr. Pentz: I offer that as Defendant's Exhibit 10.

Mr. Walkup: I make the same objection as to the two previous exhibits of the defendant, and wish to point out in support of the objection that certainly Permanente or the Maritime Commission could in no way be bound by the fact that in 1946, long after the event, the Navy Department, after acquiring title to the vessels by a trade with the Maritime Commission enters a list of vessels as Navy owned. That would certainly have no bearing on the issues of this lawsuit.

The Court: Same ruling.

(The document referred to was marked Defendant's Exhibit Number 10.)

Mr. Pentz: Your Honor, that is the conclusion of the correspondence, and I wish at this time to read in a portion of [104] the deposition of Captain McShane.

The Court: Very well.

#### DEPOSITION OF CAPTAIN McSHANE

(The following portions of the deposition referred to was read, Mr. Pentz reading the questions, and Mr. Mellin reading the answers:)

Mr. Pentz: For the benefit of counsel, I begin to read from Page 3 of their deposition in the middle of the page:

(Deposition of Captain McShane.)

“Q. State your name.

“A. Ralph Edward McShane.

“Q. Please state your rank.

“A. Captain, United States Navy.

“Q. Captain McShane, are you present at this time and place in response to a subpoena duces tecum issued by the District Court of the United States for the District of Columbia, dated September 15, 1947, in the action entitled The Permanente Metals Corporation, a corporation, plaintiff, vs. John Urquhart Birnie and Massachusetts Bonding and Insurance Company, defendants and cross-complainants, being Civil Action File No. 26215-S in the United States District Court, Northern District of California, Southern Division, which subpoena is addressed to the Secretary of the Navy or such other person as he shall designate on his behalf?

“A. I am.

“Q. Captain, are you the person who has [105] been designated by the Secretary of the Navy to appear on his behalf and to answer such questions on his behalf as may be propounded to you during this deposition?

“A. I have been designated by the Judge Advocate General of the Navy, acting in behalf of the Secretary, to testify in connection with the production of certified copies of records and documents.

“Q. How long have you been on active duty in the United States Navy, Captain?

“A. Including my service as midshipman, since



(Deposition of Captain McShane.)

July, 1917. As a commissioned officer continuously since June, 1920.

“Q. And your status as a commissioned officer of the United States Navy continues at the present time? A. Yes, sir.

“Q. At the present time, to what division of the United States naval organization are you attached?

“A. With the Bureau of Ships, Navy Department.

“Q. Captain McShane, in accordance with naval procedures, what are the principal steps taken by the Navy when a vessel intended for its use is ready for delivery to the Navy?

“A. The normal procedure upon delivery is to have the vessel formally accepted by a naval officer, frequently the commandant of the district in which the [106] vessel is delivered. There is the signing of a formal document when the vessel is procured from a private contractor. Shortly after it is formally delivered, the vessel is placed in commission, as a normal practice, if the vessel is intended to be placed in active service.

“Q. Now, what does the Navy do, as a customary procedure, in connection with identifying any such vessel?

“Mr. Walkup: By ‘such vessel,’ to what are you referring?

“Mr. Pentz: Referring to the preceding question.

“A. When it is placed in commission, it is added into a list of ships. Prior to its commissioning it

(Deposition of Captain McShane.)

has been assigned an identification number and a designating symbol and a name.

“Q. Captain McShane, does the United States Navy maintain a record of the names and navy numbers and designation symbols of the vessels it possesses from time to time? A. Yes, sir.

“Q. Will you tell us, please, the general nature of the record that you have referred to?

“A. The names and symbol numbers for all the ships in the possession of the Navy are recorded and [107] are published periodically in a standard document called the Naval Vessels Register.

“Q. Now, Captain, the record you have described as being called the Naval Vessels Register is an official document or record of the United States Navy, is it not? A. Yes, sir.

“Q. Is the Naval Vessels Register in the custody and control of the Secretary of the Navy?

“A. Yes, sir, in the sense that all official naval records are in his custody.

“Q. Have you prepared an excerpt from the Naval Vessels Register pertaining to the vessels named in the subpoena duces tecum in response to which you are present here today?

“A. Yes, sir.

“Q. Have you it in your possession?

“A. Yes, sir.

“Q. May we see it, please?

“A. Yes, sir. (Hands document to Mr. Pentz.)

“Mr. Pentz: Mr. Labofish, I hand you a paper headed ‘Excerpts from: Naval Vessels Register,

(Deposition of Captain McShane.)

Navships 18-1-8 dated 1 July, 1947,' and ask that you please mark it for us for identification as Defendants' Exhibit 1. (So marked.) [108]

"Q. Captain, is the paper identified as Defendants' Exhibit 1 a true, correct, and accurate copy of a portion of the Naval Vessels Register?

"A. Yes, sir.

"Q. At this time, Mr. Labofish, I desire to offer Defendants' Exhibit 1 into evidence and as a part of the record in this proceeding."

Mr. Walkup: To which I object on the ground it is incompetent, irrelevant, and immaterial. As will be shown by the exhibit, it is a document read by the Navy bearing date of July 1st, 1947, having no bearing upon the facts existing at the time of the performance of the work by Mr. Birnie for Permanente Metals Corporation, and certainly not binding on Permanente in its contractual relations with Mr. Birnie at that time.

The Court: Overruled.

Mr. Pentz: I offer at this time a document which is a duplicate of Exhibit 1 in Captain McShane's Washington deposition entitled, "Naval Vessels Register, Navships, 18-18 dated 1 July, 1947," as Defendant's Exhibit 11.

Mr. Walkup: Same objection.

The Court: Same ruling.

(The document referred to was marked Defendant's Exhibit Number 11.)

(Deposition of Captain McShane.)

Mr. Pentz: (Reading:) [109]

“Q. Captain, I direct your attention to Defendants’ Exhibit 1, more particularly the first vertical column thereof on the left. What is the meaning of the letters APA contained in that column?”

Mr. Walkup: Pardon me, your Honor. In order to avoid objecting to practically every question from now on which relates to the Captain explaining the exhibit just introduced and the Navy meaning of the various symbols thereon, I would like to have a running objection.

The Court: You may have a running objection to such questions.

Mr. Walkup: And I would like to state further that the theory of the objection is that what the Navy did with the vessels after they acquired them from the Maritime Commission was completely beyond Permanente’s control. We built the vessels for the Maritime Commission. If the Maritime Commission subsequently delivered them to the Navy and the Navy did certain things with them, we would not be bound by that.

Mr. Collett: Of course, the defendant Maritime Commission joins in the same objection.

The Court: It will be understood you join in all the objections Mr. Walkup makes.

(The reading of the deposition was continued, as follows:)

“A. The first A indicates auxiliary, the P indicates transport, and the second A indicates attack.

(Deposition of Captain McShane.)

The [110] three letters are commonly used to mean attack transport.

“Q. Directing your attention from left to right to the second vertical column of numbers appearing on Defendants’ Exhibit 1, please tell us the meaning of those numbers?

“A. Those numbers are serial numbers within a given lettered classification, and in conjunction with the lettered classification identify a specific ship.

“Q. Captain, when you referred to lettered classification in your last answer, did you have reference, in the case of this Exhibit 1, to the classification APA?      A. Yes, sir.

“Q. Directing your attention, Captain, to the vertical column third from the left as contained on Defendants’ Exhibit 1, I ask you to tell us the meaning of the words that appear there in the vertical column.

“A. Those are the names of the individual ships.

“Q. You refer to the United States official Navy name?      A. Yes, sir.

“Q. Likewise the lettered classification under the heading Type is the official United States [111] Navy classification of the vessels bearing the names in the third column?

“A. May I hear that again?

“Question repeated by stenographer.

“A. Yes, sir.

“Q. And likewise, Captain, the numbers appear-



(Deposition of Captain McShane.)

ing in the second vertical column from the left hand side are the official Navy numbers of the vessels whose names appear in the third column?

“A. Yes, sir.

“Q. Now, Captain, directing your attention to the lettering and numbers immediately following the vessel name and separated by slant lines, and appearing under the heading ‘Name’ in Defendants’ Exhibit 1, tell us, if you please, what those letterings and numbers mean?

“A. Those are the identification numbers in the Navy records identifying the Maritime Commission’s hull number.

“Q. Now, directing your attention to the vertical column fourth from the left hand side of Defendants’ Exhibit 1 under the heading ‘Vessel Status,’ tell us, if you please, the meaning of those letters.

“A. May I refer to some notes?

“Mr. Pentz: I have no objection. [112]

“Mr. Walkup: It is all right with me.

“Mr. Pentz: May I suggest, Captain, when you give us the benefit of your statement in this regard, that we refer to the vessels’ names, in order to properly identify the symbols that we are asking you to describe?

“A. Yes, sir. APA 204 Sarasota, out of commission in reserve.

“Q. May I interrupt you, Captain? In other words, that is the meaning of the letters RES/OC?

“A. Yes, sir. APA 205 Sherburne, RES/OC, meaning out of commission in reserve. APA. 206

(Deposition of Captain McShane.)

Sibley, RES/OC, meaning out of commission in reserve. APA 207 Mifflin, RES/OC, meaning out of commission in reserve. APA 208 Talladega, RES/OC, meaning out of commission in reserve. APA 209 Tazewell, RES/OC, meaning out of commission in reserve. APA 210 Telfair, RES/OC, meaning out of commission in reserve. APA 211 Missoula, RES/OC, meaning out of commission in reserve. APA 212 Montrose, RES/OC, meaning out of commission in reserve. APA 213 Mountrail, RES/OC, meaning out of commission in reserve. APA 214 Natrona, RES/OC, meaning out of commission in reserve. APA 215 Navarro, RES/OC, meaning out of commission in reserve. APA 216 Neshoba, RES/OC, meaning out of commission in reserve. APA 217 New Kent, ACT, meaning [113] active. APA 218 Noble, ACT, meaning active. APA 219 Okaloosa, ACT, meaning active. APA 220 Okanogan, ACT, meaning active. APA 221 Oneida, RES/OC, meaning out of commission in reserve. APA 222 Pickaway, ACT, meaning active. APA 223 Pitt, DI/WSA meaning vessel transferred to War Shipping Administration—Maritime Commission for disposition. APA 224 Randall, ACT, meaning active. APA 225 Bingham, DI/RET, meaning vessel returned to original owner."

The Court: Recess.

(Thereupon an adjournment was taken until 2:00 o'clock p.m., this date.) [114]

Thursday, February 23, 1950—2:00 P.M.

(The reading of the deposition of Captain

(Deposition of Captain McShane.)

Ralph Edward McShane was continued, as follows, Mr. Pentz reading the questions and Mr. Mellin the answers:)

“Q. Captain, of the vessels you have named, are there any of them not presently in the possession of the United States Navy?

“A. According to the records, APA 225, the Bingham, has been transferred to the War Shipping Administration or the Maritime Commission for disposition. All others, according to the record, are in the possession of the Navy.

“Q. Captain McShane, does the United States Navy maintain a record concerning the source of its authorization in having procured APA 204 the Sarasota, APA 205 the Sherburne, APA 206 the Sibley, APA 207 the Mifflin, APA 208 the Talladega, APA 209 the Tazewell, APA 210 the Telfair, APA 211 the Missoula, APA 212 the Montrose, APA 213 the Mountrail, APA 214 the Natrona, APA 215 the Navarro, APA 216 the Neshoba, APA 217 the New Kent, APA 218 the Noble, APA 219 the Okalossa, APA 220 the Okanogan, APA 221 the Oneida, APA 222 the Pickaway, APA 223 the Pitt, APA 224 the Randall, and APA 225 the Bingham? Now, do you still understand the [115] question, Captain?

“A. No, sir. May I hear the first part of it?”

Mr. Mellin: And may the record show there, your Honor, the stenographer reads the question, and the answer is:

“A. Yes, sir.



(Deposition of Captain McShane.)

“Q. Captain, does the Navy maintain a record of the source of the appropriation of money for payment concerning the acquisition of the vessels I have named in the preceding question?

“A. Yes, sir.

“Q. Are the originals of the records you refer to presently under the control and custody of the Secretary of the Navy? A. Yes, sir.

“Q. Do you have in your possession a copy of the records you have mentioned? A. Yes, sir.

“Q. Would you let us see it? I have it here. Will you identify for our benefit the record that you mentioned?

“A. I have here excerpts from a compilation called Quarterly Combined Authorization Report, which is identified by the Navy file Navships (1851). This excerpt was taken from the copy of that compilation marked Report No. 40, dated 1 January, 1947.” [116]

Mr. Pentz: And, for the purpose of the record, I have in my hand that paper which corresponds to Exhibit 2, as mentioned in the next sentence.

“Q. Captain McShane, is the paper identified as Defendants’ Exhibit 2 a true, correct, and accurate copy of excerpts from the original records from which the entries are taken? A. Yes, sir.

“Q. Is the paper marked Defendants’ Exhibit 2 authenticated? A. Yes, sir.

“Q. Also in that respect, Captain, is not Defendants’ Exhibit 1 likewise authenticated?

“A. Yes, sir.

(Deposition of Captain McShane.)

“Mr. Pentz: At this time, Mr. Labofish, I would like to introduce into evidence heretofore marked for identification as Defendants’ Exhibit 2. (So marked.)

“Q. Captain, I note the following language contained at the top of Defendants’ Exhibit 2: Act of December 17, 1943, Auxiliary Portion of Public Law 204, 2,500,000 Tons. What relationship, if any, do those words I have read you have with respect to the vessels whose names and numbers are contained in the vertical column located beneath those words?”

Mr. Walkup: Object to that, in addition to the running [117] objection previously noted, on the ground it calls for an opinion and conclusion of the witness as to the interpretation of a Navy document which speaks for itself.

Mr. Pentz: I can reply to that, your Honor. We are not trying to modify the terms of this document in any way, but the lettering that appears at the top of the names of our vessels does have in the Navy Department a particular significance, and we are not inquiring as to the law, we are only inquiring as to the significance those words have as far as the Navy records are concerned.

The Court: Overruled.

(The reading of the deposition was continued, as follows:)

“A. The words you have read identify the public

(Deposition of Captain McShane.)

law which granted authority for the acquisition or construction of the ships in question.

“Q. I note the following language contained at the top of Defendants’ Exhibit 2: P.L. 216 Appropriation Act 12/23/43, 1,640,303 tons Clearance, Actual Obligations, and ask you what relationship, if any, do the words I have just read you have with respect to the vessels whose names and numbers are contained in the vertical columns located beneath those words on Defendants’ Exhibit 2?”

Mr. Walkup: I make the same objection, your Honor——

The Court: Same ruling. [118]

Mr. Walkup: ——as calling for an opinion and conclusion.

(The reading of the deposition was continued, as follows:)

“A. Those words identify the appropriation act which made the initial appropriation of funds for the purpose of undertaking the acquisition or construction of the vessels in question.”

Mr. Pentz: Your Honor, at this time, I offer in evidence the document which is identical to Defendant’s Exhibit 2 in the deposition of Captain McShane as Defendant’s Exhibit 12.

The Court: Received.

Mr. Walkup: Our running objection——

The Court: Yes.

Mr. Walkup: ——extends to that.

(The document referred to was marked De-

(Deposition of Captain McShane.)

fendants' Exhibit Number 12.)

Mr. Pentz: No further questions.

Mr. Walkup: I would like to read part of the cross-examination, commencing on Page 13.

Mr. Mellin: Do you want me to read the answers, Mr. Walkup?

Mr. Walkup: Thank you.

Mr. Mellin: Page 13?

Mr. Walkup: Yes.

(The reading of the deposition of Captain McShane was continued, Mr. Walkup reading the questions and Mr. Mellin the [119] answers, as follows:)

“Q. Captain, you testified concerning the Naval Vessels Register. Does the fact that a vessel is listed in the Naval Vessels Register necessarily imply that that vessel is owned by the United States Navy? A. I don't know, sir.

“Q. Do you know of your own knowledge whether or not every vessel listed in the Naval Vessels Register is in fact a vessel title to which is at the time of listing in the United States Navy?”

Mr. Pentz: I object to the form of the question as calling for a conclusion of the witness.

The Court: Overruled.

(The reading of the deposition was continued, as follows:)

“A. I do not know, sir, of my own knowledge.

“Q. On Defendants' Exhibit 1 the term

(Deposition of Captain McShane.)

Navships appears. That is a designation of the Navy, is it, Captain?      A. Yes, sir.

“Q. That is a coined word of the Navy, coined by the Navy Department itself?      A. Yes, sir.

“Q. Do you know, Captain, whether or not the designation Navships indicates that this is a publication of the Bureau of Ships? [120]

“A. It is ordinarily used as a file designation to indicate publications of the Bureau of Ships of the Navy Department.

“Q. Do you know of your own knowledge, Captain, when these particular vessels designated on Defendants' Exhibit 1 were first included in the Naval Vessels Register?      A. No, sir.

“Q. The particular issue of the Naval Vessels Register that you have identified as Defendants' Exhibit 1 is the issue of 1 July, 1947?

“A. That is correct.

“Q. And how frequently is the Naval Vessels Register published?      A. I don't know.

“Q. Do you know if the issue of 1 July, 1947, is the latest issue available?

“A. To the best of my knowledge it is.

“Q. I will call your attention to the numbers 18-1-8 appearing at the top of Defendants' Exhibit No. 1. Will you please state what those numbers designate?      A. I do not know of a certainty.

“Q. What is your judgment on it, if you have any?

“A. My opinion is that it constitutes a file [121]



(Deposition of Captain McShane.)

designation by which the Naval Vessels Register is distinguished from other documents.

“Q. That is a Navy designation, in your opinion, to distinguish the Naval Vessels Register from other Navy documents?

“A. I would say more precisely from other Navships documents.

“Q. Now the term APA appearing on Defendants’ Exhibit 1 is a designation coined or developed by the Navy Department, is it not?

“A. To the best of my knowledge, it is.

“Q. May I call your attention to the designation appearing on Defendants’ Exhibit 1 bearing the name of each vessel, ‘MCV’ followed by a number in each case. Would you please state what the designation ‘MCV’ designates?

“A. It is my understanding that the MC means Maritime Commission, and that the V, I believe, refers to a type, but of that I am not certain.

“Q. That is a Maritime Commission as distinguished from a Navy Department designation, is it not?

“A. That is my understanding, yes, sir.

“Q. And the number following each such MCV designation is a Maritime Commission hull number, is it not, Captain? [122]

“A. That is my understanding, yes, sir.

“Q. Referring now to the column in Defendants’ Exhibit 1 entitled ‘Status,’ which in turn has three subheadings under it, the status date is shown in the last column, the month being abbreviated by

(Deposition of Captain McShane.)

the first numeral and the year by the second numeral?      A. Yes, sir.

“Q. Now those month and year designations on the first 13 vessels are January, 1947, and that is also true of the 18th vessel, whereas other vessels in the list have different dates. Can you explain the basis for the difference in the status dates on the various vessels?

“A. I am sorry. Will you please indicate what you mean by the difference?

“Q. I am getting at is simply this: Some of the vessels show the status date as January, 1947, some of the vessels show the status date as March, 1946, some show it as September, 1946, some as June, 1946, and some as April, 1947. Why is there a difference in the status dates listed?

“A. I cannot explain the reason why the vessels were placed in these various statuses. I do not know the reasons which dictated their having attained that status on that particular date. [123]

“Q. Then these status dates refer back to the date on which each particular vessel received the status which is shown in the column entitled Vessel status?      A. Yes, sir.

“Q. Do you know the present status of any of the vessels shown on Defendants' Exhibit 1?

“A. Of my own knowledge I do not know the status at this instant other than is shown on Exhibit No. 1.

“Q. Does Exhibit No. 1 show the status of each of the vessels as of 1 July, 1947?

(Deposition of Captain McShane.)

“A. What I am trying to explain is the date of publication was 1 July, 1947, and this indicates the status at some time prior to that, at the time of the preparation of the data from which the publication was made. Do I make that clear, Mr. Walkup?

“Q. I am just trying to get it clear in my own mind. To further clarify it, take APA 204 on January, 1947. That vessel went into status RES/OC, which, according to your testimony, means out of commission in reserve. A. Yes, sir.

“Q. Now can you tell from this compilation, Defendants' Exhibit 1, whether APA 204 is still in that status, RES/OC? [124]

“A. As of this instant, Mr. Walkup, as of today?

“Q. Yes. A. No, sir.

“Q. Could you tell as of July 1, 1947, from this table that the status of APA 204 was as designated by the code RES/OC?

“A. It is possible that between the time the original data was prepared for publication and the first of July, 1947, a change had occurred.

“Q. Well, then, the status date in the last column on Defendants' Exhibit 1 refers to the time when a particular vessel attained the particular status specified in the column entitled Vessel Status opposite the status date for that vessel?

“A. Yes, sir.

“Q. What is meant by the code numbers appearing under Status under the heading Code?



(Deposition of Captain McShane.)

“A. Those numerals indicate a group of symbols, all of which have the same letters preceding the slant line. Is that clear?

“Q. Well, your statement is clear, but I cannot apply it to this register.

“A. Yes, sir. May I give an example? Code 1, for instance, embraces three kinds of status, which are designated ACT/IC, ACT/IS, and ACT/BL, each of [125] which defines a different category of active ship.

“Q. What are those letters following the diagonal line?

“A. IC means in commission, IS means in service, and BL means vessel building.

“Q. On the list of abbreviations under Vessel Status, none of those letters appear following ACT. Why is that?

“A. I can't explain that. I don't know.

“Q. What does Code No. 3 mean?

“A. Code No. 3 embraces six kinds of status.

“Q. What are the six kinds?

“A. The six are RES/IC, meaning in commission in reserve; RES/OC, meaning out of commission in reserve; RES/IS, meaning in service in reserve; RES/OS, meaning out of service in reserve; RES/DC, meaning decommissioned in caretaker status; RES/BL, meaning reserve vessel building.

“Q. We have one other code number left, Captain, so we may as well take it. Code No. 7.

“A. Yes, sir. It embraces two categories, sym-

(Deposition of Captain McShane.)

bolized DI/WSA, meaning vessel transferred to War Shipping Administration—Maritime Commission for disposition; DI/RET, meaning vessel returned to original owner.

“Q. Taking the symbol DI/WSA, which, according [126] to your testimony, signifies vessel transferred to WSA—MC, is that reference to WSA—MC an alternative designation, either the War Shipping Administration or the Maritime Commission?

“A. I don’t know for a certainty, Mr. Walkup.

“Q. The symbol DI/RET refers to return to the original owner? A. Yes, sir.

“Q. Does that refer to the original owner of the vessel in question? A. I assume that it does.

“Q. You have a list there of the meaning of these terms. Your list says nothing more than returned to original owner?

“A. That is all, yes, sir.

“Q. In the case of APA 225 shown on Defendants’ Exhibit 1, is there any way that you can tell from that compilation, Defendants’ Exhibit 1, to whom APA 225 was returned? A. No, sir.

“Q. Do you know of your own knowledge whether a vessel which had been transferred from the Maritime Commission to the Navy Department on a loan charter basis would be listed as a naval vessel in the Naval Vessels Register?

“A. I don’t know, sir. [127]

“Q. Referring now to Defendants’ Exhibit 2, is this exhibit also, that is, the original from which

(Deposition of Captain McShane.)

this constitutes excerpts, a publication of the Bureau of Ships of the Department of the Navy?

“A. Yes, sir.

“Q. And that is also shown by the designation Navships appearing on the exhibit, is it?

“A. Yes, sir.

“Q. And this particular exhibit constitutes excerpts from Volume No. 40 dated 1 January, 1947, of the Quarterly Combined Authorization Report?

“A. Yes, sir.

“Q. Is that the latest issue of that particular publication?

“A. To my knowledge it is, yes, sir.

“Q. Is that publication a quarterly publication as indicated by the title?

“A. I can only assume that it was at one time.

“Q. Do you know if it has been continued after 1 January, 1947?

“A. To the best of my knowledge it has not.

“Q. What is the extent of your knowledge on that subject?”

Mr. Pentz: Well, I object to that question. In the first place, the form is not sufficiently definite to permit [128] this witness to properly answer.

The Court: Overruled.

Mr. Mellin: I guess you will have to read another question.

Mr. Walkup: Yes.

(Continuing the reading of the deposition:)

“Mr. Walkup: I will reword the question.

“Q. Captain, you stated that to the best of your

(Deposition of Captain McShane.)

knowledge. Do you have any knowledge on the subject? A. Yes, sir.

“Q. What is your knowledge upon which you based your answer to the previous question?

“A. The compilation in question is not made under my immediate supervision, but elsewhere in the Bureau of Ships. I use the publication infrequently, and I am not in a position to state with certainty as to whether it continues to be published or not.

“Q. Referring to the column on Defendants' Exhibit 2, headed 'Source,' and particularly to the small letter a in parentheses appearing at the left side of the word 'Transfer,' each place that the word Transfer appears in that column, will you please state what is meant, if anything, by the small letter in a parentheses?

“A. I believe it refers to a footnote appended to the entire document, and the significance of the a [129] I do not know at this time.

“Q. I call your attention, Captain, to the small letter a in parentheses appearing in the lower right hand corner of Defendants' Exhibit 2, followed by the words 'Under Loan Charter Prior to 1/14/46.' Does that small a in parentheses, followed by the language just quoted by me, constitute the footnote a to which you have just referred?

“A. I assume it does, yes, sir.

“Q. Will you please explain the meaning of the language quoted in footnote (a)?

(Deposition of Captain McShane.)

“Mr. Pentz: I object to the question as calling for a conclusion of the witness.”

The Court: That apparently is withdrawn.

(The reading of the deposition was continued, as follows:)

“Mr. Walkup: Captain, you have testified, have you not, concerning, the meaning of the various language appearing on Defendants’ Exhibit 2?

“A. Yes, sir.

“Q. You are familiar, are you not, with the meaning of the language appearing on portions of this Defendants’ Exhibit 2, other than the language appearing following the item which you have now identified as footnote (a) to the report from which this Defendants’ Exhibit 2 is an excerpt? [130]

“A. May I hear that question again, sir? I got lost in the context of it.

“(Stenographer reads question.)

“A. Yes, sir.

“Q. Are you familiar with the meaning of the language following footnote (a) appearing on the exhibit, or are you not?

“A. I am familiar with the fact that vessels were acquired on a loan charter basis. The legal technicalities of a loan charter I am not familiar with.

“Q. Captain, is it your understanding then that the footnote (a) which modifies the word Transfer each time the word Transfer appears under the column entitled Source, indicates that prior to Jan-



(Deposition of Captain McShane.)

uary 14, 1946, each of the vessels designated was under loan charter agreement from the United States Maritime Commission to the United States Navy Department?"

Mr. Pentz: I object to the form of the question as calling for a conclusion of the witness.

The Court: Overruled.

(The reading of the deposition was continued as follows:)

"A. I would interpret those words to mean what you have said.

"Q. What is the meaning, Captain, of the abbreviations, numbers, and diagonal lines appearing under [131] the heading Date of Contract or Acquisition on Defendants' Exhibit 2?

"A. As used in connection with ships acquired by contract from private shipbuilders, under those contracts made directly between the Navy and a private shipbuilder, it means the date of signing of the formal contract to build the ship. I interpret the date when used in conjunction with the word Acquisition to mean the date upon which the Navy formally acquired the ship.

"Q. Can you tell from that list, Captain, whether a particular date refers to the date of a contract, or on the other hand to the date of acquisition?

"A. Only by reading it in conjunction with the notation under the column headed Source.

"Q. Can you tell in this case by reading the date

(Deposition of Captain McShane.)

abbreviation in conjunction with the word Transfer under the heading Source?

“A. I am not sure of that. I believe there is a technicality involved here, in that the vessels in question were acquired by the Navy prior to the date of formal transfer, but I am not sure of that.

“Q. Do these dates, to your knowledge, shown in the column Date of Contract or Acquisition, refer to any contract date? [132]

“A. I think not. I may not have a clear understanding of contract, Mr. Walkup. In my terminology, my familiarity with shipbuilding contracts, a contract to me means a document in shipbuilding for the procurement of a ship from a private shipbuilder, and in that sense I would assume that the dates here do not refer to that form of contract. If the process of acquisition legally constitutes a contract, then I would assume that date would apply to a contract in that sense.

“Q. I take it from that, then, Captain, that your judgment is that the dates shown under the column entitled Date of Contract or Acquisition refers rather to a date of acquisition in each case than to the date of any shipbuilding contract?

“A. Yes, sir.

“Q. Calling your attention to the abbreviations, numbers, and letters appearing under the heading Directives on Defendants' Exhibit 2, will you please state the meaning of those abbreviations, numbers, and letters?

“A. Yes, sir. Aux. means auxiliary. Ves. means

(Deposition of Captain McShane.)

vessels. Bd. means Board. Rpt. means report.

“Q. Did you want to interpret the balance of that, Captain, please?

“A. The entire sentence first appearing under the word Directives means Auxiliary Vessels Board Report [133] No. 84 of January 10, 1944, modified by Chief of Naval Operations’ restricted letter Serial 1S4P421 of January 23, 1946.

“Q. Is that document still restricted, to your knowledge? A. Yes, sir.

“Q. And by restricted you mean it is unavailable for use outside the Navy Department?

“A. Yes, sir.

“Q. Would you please interpret for us the abbreviations appearing at the bottom of the column entitled Directives?

“A. Yes, sir. That would be interpreted to mean Auxiliary Vessels Board Report No. 84 of January 10, 1944.

“Q. Is that report restricted?

“A. Yes, sir.

“Q. That refers, does it not, to the same report as the report referred to above in the same column?

“A. Yes, sir.

“Q. Is it the report, Captain, that is restricted, or is it the letter that is restricted?

“A. Both are what are classified documents, meaning they are of restricted or a higher classification.

“Q. Referring to the vessel listed on [134] Defendants’ Exhibit 2 as APA 225, Bingham, MCV

(Deposition of Captain McShane.)

hull 573, do you know the meaning of the term Loan Charter Basis appearing in the column headed Source?"

Mr. Pentz: I object to the form of the question as calling for the conclusion of the witness.

The Court: Overruled.

(The reading of the deposition continued, as follows:)

"A. Only insofar as I have described before my knowledge of the significance of loan charter.

"Q. Do you know of your own knowledge, Captain, whether the directive referred to on Defendants' Exhibit 2 as Auxiliary Vessels Board Report No. 84 of 1/10/44 represents the first official action of the Navy Department with reference to the acquisition of the vessels shown on the exhibit?

"A. I do not know, sir.

"Q. This Quarterly Combined Authorization Report is a report setting forth the Navy Department designations concerning the various vessels listed thereon, is it not? A. Yes, sir.

"Q. A document of the Navy Department as distinguished from a report of any other branch of the Federal Government? A. Yes, sir. [135]

"Q. Captain, what information, if any, do you have, of your own knowledge, showing that the funds appropriated by Public Law 216, Appropriation Act 12/23/43, were for the purpose of carrying out the authorization for construction and acquisition of ships under Public Law 205?"

Mr. Pentz: No objection.

(Deposition of Captain McShane.)

(The reading of the deposition was continued, as follows:)

“A. I have read the appropriation act in question, and to the best of my memory it refers specifically to the authorization act, namely, Public Law 204.

“Q. Then you are basing your testimony on the effect of Public Law 204 and Public Law 216 on your interpretation of those laws?”

Mr. Pentz: No objection.

(The reading of the deposition was continued, as follows:)

“A. I have discussed the general question of the significance of authorization acts in conjunction with appropriation acts a number of times in connection with my present duties, and I would say from that point of view only I have some further knowledge than is in the text of the specific laws mentioned here. I would further say that in my opinion I could not qualify as an expert in the significance of these or any other laws in their technical aspects.” [136]

Mr. Walkup: At this time, your Honor, I move to strike the answers given by the witness on Pages 9 and 10 of the deposition, and I will specify which ones I refer to. I refer to the questions and answers starting with just below the center of the page:

“Q. Captain, I note the following language,” et cetera. That question and answer, and the next question and answer, on the ground it now appears



(Deposition of Captain McShane.)

on cross-examination that the Captain concedes he has no knowledge other than the wording of the laws themselves, and he does not feel qualified as an expert on the interpretation of those laws.

Mr. Pentz: My reply to that, if your Honor please, is the fact that to have produced a document here without any explanation as to the relationship between the language at the top of the document and the vessels below would have been to have tendered a document without any evidence as to the connection between the two. Now, the Navy Department, which is true of any other person or agency, is presumed to operate pursuant to law. Now, certainly where we show that that Public Law appellation is at the top of the instrument, the interpretation thereby is that it refers to the ships below, and certainly we have a right to assume that the Navy did pursue what was legal, and that particular law refers to the ships below.

Now, naturally Captain McShane is in no position to [137] interpret the law, but he is in the position to state that insofar as that particular record is concerned, Public Law 204 refers to the ships listed below.

His testimony was only introduced by me on that subject for a limited purpose of showing that so far as that document is concerned one referred to the other.

The Court: If that is your limited purpose, I want it to remain in for that limited purpose. Motion denied.

(Deposition of Captain McShane.)

(The reading of the deposition was continued as follows:)

“Q. Referring now to Defendants’ Exhibit 3, the references (a) and (b) in the letter of January 23, 1946, are set forth in other parts of the exhibits introduced in direct testimony, are they not?

“A. Yes, sir.

“Q. This particular letter, Defendants’ Exhibit 3, is a letter from one branch of the Navy Department to another branch of the Navy Department, is that correct?      A. Yes, sir.

“Q. And the reference in paragraph No. 2 to the correction of records refers, does it not, to the correction of Navy Department records?

“A. That is correct.

“Q. Referring now to Defendants’ Exhibit 4, reference is made in the first line to letter Serial 06P421, dated 29 October. Do you have a copy of that letter, [138] Captain?

“A. I don’t have a copy here.”

Mr. Walkup: To save time, I might state here to the Court that I requested the Captain to produce that letter of 29 October, 1944, and he did so at a continued hearing of the deposition, and I intend to introduce that on rebuttal, so I believe we can now skip part of the examination.

Skipping, then, down to Page 25, about the middle of the page:

(The reading of the deposition was continued, as follows:)

(Deposition of Captain McShane.)

“Q. Referring now to Defendants’ Exhibit 5, is the letter of October 29, 1945, referred to on line two of that exhibit, the same letter of October 29 referred to in line one of Defendants’ Exhibit 4?

“A. I can only assume from the context that it is.

“Q. Do you know, Captain, if there was a reply from the Secretary of the Navy to Admiral Land to the letter of January 14, 1946, which is Defendants, Exhibit 5? A. I do not know, sir.”

And the Captain then agreed to make a search for that, and produce it at the same continued hearing of the deposition.

I have no further questions.

Mr. Pentz: No questions.

Now, your Honor, insofar as the presentation of the [139] Defendants’ case in chief is concerned, it will be limited by my offer to introduce a few of the admissions under Rule 36, which I will proceed to do at this time.

I am now referring to the defendants’ request for admissions, of which there are four in the record, but this one was filed November 24, 1948:

“Question 1: With respect to the photostatic document entitled ‘Ship Construction Progress, Permanente Metals Corporation, Richmond Shipyard Number 2,’ attached hereto as Exhibit A,”—and I have here available a copy of that exhibit A—

“(a) The attached copy is a true, correct, and accurate copy of an original record of the Per-

(Deposition of Captain McShane.)

manente Metals Corporation, Richmond Shipyard Number 2;

“(b) That the original record, of which the attached is a copy, was made and compiled by The Permanente Metals Corporation, Richmond Shipyard Number 2, in the ordinary course and performance of its business;

“(c) The original record and the attached copy fairly and truthfully represent the facts which it purports to say.

“Answer: Admitted, except as follows.

“Admits that the original record and the attached copy fairly and truly represent the facts which it purports to say, except that such record and copy in the [140] form set forth does not disclose the date of preparation thereof, and does not purport to represent the date on which the Navy Hull numbers or the names of the ships were assigned, or by whom such Navy Hull Numbers or names of the ships were assigned.”

At this time I would offer in evidence as Defendants' Exhibit 13 a duplicate of Exhibit A, as is described in that particular request for admissions.

Mr. Walkup: Now, as to this exhibit, your Honor, my previous running objection would not cover, and the only objection that I have to the introduction of this document is that which was stated in the answer to the request for admission, it might be mis-read unless it was shown when it was prepared, because what it is is a report made up at some date which is not shown on it.

The Court: Can't you agree upon the date?

Mr. Pentz: No, I don't think either one of us knows the date, but it was stipulated that it truly represents the facts it purports to state, and it states the hull numbers, it states the names, it states the dates of the keel laying. That is the important thing, is when were these keels laid.

Mr. Walkup: I will stipulate the date of keel laying is correct.

The Court: That is your purpose?

Mr. Pentz: The second purpose is to show the date of [141] delivery to the Maritime Commission.

The Court: And that date is shown?

Mr. Pentz: Yes.

Mr. Walkup: There is no objection on that ground. I wouldn't want to create the impression that Permanente produced these Navy numbers, Navy names, and keel laying dates, because this is on their records.

The Court: It will be received.

(The document referred to was marked Defendants' Exhibit Number 13.)

Mr. Pentz: The next bit of evidence is not in logical sequence to this material, but I would like to introduce two letters as they are answers to letters that Mr. Walkup has placed in evidence. I wish to offer this as Mr. Birnie's answer first to the letter heretofore admitted into evidence and designated plaintiff's O.

I am reading now from my requested admissions filed November 24, 1948, question number two:



“With respect to the copy of a letter dated April 4, 1947, addressed to The Permanente Metals Corporation and signed by Elliott H. Pentz for Hill, Morgan & Farrer, attached hereto as Exhibit B”——

and I have here a copy of that Exhibit B.

“(a) The attached copy is a true, correct, and accurate copy of an original letter.” [142]

“Answer: Admitted.”

“(b) The original letter, of which the attached is a copy, was received by the Permanente Metals Corporation on or about April 4, 1947, in the usual and ordinary course of United States mail.”

“Answer: Admitted.”

At this time I offer that letter into evidence as Defendants’ Exhibit 14.

(The document referred to was marked Defendants’ Exhibit Number 14.)

Mr. Pentz: And the other letter has to do—it is a reply to the letter Mr. Walkup introduced as Plaintiff’s N.

Reading from the same request for admissions, question four:

“With respect to the copy of a letter dated March 20, 1947, addressed to the United States Maritime Commission and signed by John Urquhart Birnie, attached hereto is Exhibit D”——

and the letter I have is a true and correct copy of Exhibit D.

“(a) The attached copy is a true, correct, and accurate copy of an original letter.”

“Answer: Admitted.”

“(b) The original letter, of which the attached is a copy, was received by the United States Maritime Commission on or about March 20, 1947, in the usual and [143] ordinary course of United States mail.”

“Answer: Admitted.”

And at this time I offer into evidence that letter as Defendants' Exhibit 15.

(The document referred to was marked Defendants' Exhibit 15.)

Mr. Pentz: Now, your Honor, there are a few more left, about four.

I have now reference to my request for admissions following this action on November 24, 1948, to identify the document:

“Question 4: That”—I have used the words “That the aforesaid ships,” but that refers to my interpolation—“That the ships designated as United States Maritime Commission hulls numbers 552 through 573 were delivered into the control, custody, and sole right of possession of the United States Navy at the date and at the time shown opposite each under the columns headed ‘Actual Delivery’ on the aforesaid document entitled ‘Ship Construction Progress.’”

“Answer: Denies that said ships were delivered by the Permanente Metals Corporation into the control, custody, and sole right of possession of the United States Navy, and in this connection avers and alleges that such ships were delivered by the Permanente Metals [144] Corporation upon com-

pletion into the control, custody, ownership, and sole right of possession of the United States Maritime Commission, and that the date and time shown opposite each ship under the columns headed 'Actual Delivery' on the aforesaid document entitled, 'Ship Construction Progress' refers to and sets forth the date and time that each ship was actually delivered by The Permanente Metals Corporation to the United States Maritime Commission, as aforesaid, and that the date upon which each ship was actually delivered by the United States Maritime Commission into the control, custody, and sole right of possession of the United States Navy is set forth opposite each ship under the column headed 'Date of Contract or Acquisition' in the document entitled 'Excerpts from Quarterly Combined Authorization Report—Navships (1851) Report Number 40, 1 January, 1947,' a copy of which is attached as Exhibit 2 to the Deposition of Ralph Edward McShane, 'taken in the City of Washington, District of Columbia, on or about the 20th day of September, 1947,' a copy of which said deposition, together with the exhibits thereto, is in the possession of defendants and cross-complainants."

I wish to state that that establishes that the dates as set forth under the title "Acquisition" in Defendants' Exhibit 13—I am sorry, 12—shows the dates of delivery from the [145] Maritime Commission to the Navy.

I read from the same Request for Admissions, Paragraph 7:

"That each and all of the aforesaid ships, after

delivery into the control, custody, and sole right of possession of the United States Navy, was officially commissioned as a ship of the United States Navy."

"Answer: Admitted."

And following that, Paragraph 8:

"That with the exception of the U.S.S. Bingham, Navy Number APA-225, each and all of the afore-said ships remained in the control, custody, and sole right of possession of the United States Navy from the date of delivery of each to the United States Navy until or about July 1, 1947."

"Answer: Admit that with the exception of the U.S.S. Bingham, Navy Number APA-225, Maritime Commission Hull Number 573, and the further exception of the U.S.S. Pitt, Navy Number APA-223, Maritime Commission Hull Number 571, each and all of said ships remained in the control, custody, and sole right of possession of the United States Navy from the date of delivery of each by the United States Maritime Commission to the United States Navy until on or about July 1, 1947, and in this connection alleges and avers that the U.S.S. Bingham, Navy Number APA-225, Maritime Commission Hull Number 573, [146] was returned to the United States Maritime Commission by the Navy Department in the month of June, 1946, and that the U.S.S. Pitt, Navy Number APA-223, Maritime Commission Hull Number 571, was transferred by the Navy Department to either the United States Maritime Commission or the War Shipping Administration in the month of April, 1947."

Mr. Walkup: Your Honor, I take it that our running objection to the Navy testimony would cover the requests for admissions. For that reason I have not made a specific objection.

The Court: Very well, so understood.

Mr. Pentz: I read from the same report for admissions, Paragraph 9:

“That legal title to each and all of the aforesaid ships was transferred by the United States Maritime Commission to the United States Navy on or about January 14, 1946.”

“Answer: Admits that legal title to each and all of said ships, with the exception of the U.S.S. Bingham, Navy Number APA-225, Maritime Commission Hull Number 573, was transferred by the United States Maritime Commission to the United States Navy on or about January 14, 1946.”

Reading from the same Request for Admissions:

“That each and all of the aforementioned ships were derived from and a part of the 130 stranded APA'S [147] more particularly described and referred to in letter dated November 9, 1943, from William D. Leahy, Admiral, United States Navy, in his capacity as Chief of Staff, to the Commander in Chief of the Army and Navy, and on behalf of the joint Chiefs of Staff, addressed to Rear Admiral E. M. Land in his capacity as Chairman of the United States Maritime Commission, a copy of which is in the possession of the Plaintiff and Cross-Defendants as Exhibit I in the deposition on behalf of Plaintiff and Cross-Defendant, The Permanente Metals Corporation, taken in the City of



Washington, District of Columbia, on or about the first day of October, 1947.”

Which is in our present record, the Admiral Leahy letter, which is defendants’ Exhibit 1.

“Answer: Admitted, subject, however, to the qualification that each and all of said ships were originally derived from and a part of the Maritime Commission Design VC-2-S-AP2 vessels, including Maritime Commission Hull Numbers from 552 to 573, inclusive, which the Permanente Metals Corporation contracted to construct for the United States Maritime Commission by contract MCe-15762 between the United States Maritime Commission and the Permanente Metals Corporation under date of April 22, 1943, which contract was executed prior to said letter dated [148] November 9, 1943.”

And now referring to the same request for admissions, Paragraph 12 on the last page—and, Mr. Walkup, do you have that before you? Do you agree with me there is a typographical error there?

Mr. Walkup: I don’t know that there is, but if there is——

Mr. Pentz: Well, I will read it and you will see what I mean: Reading from Question 12:

“The estimated cost of the conversion of all of the aforesaid ships for use by the United States Navy, aggregated \$34,213,000, which sum of money the United States Maritime Commission was reimbursed in full from funds of the United States Navy.”

Mr. Walkup: That is true.

Mr. Pentz: (Reading:)

“Answer: Admits that the estimated cost of the conversion features only of said ships for use by the United States Navy aggregated \$34,213,000, which sum of money the United States Maritime Commission was reimbursed in full from funds of the United States Navy.”

And the last question, 13:

“That the actual cost of converting each and all of the aforesaid ships for use by the United States Navy was ultimately paid for in full from funds by the United States Navy.” [149]

“Answer: Admitted, with the qualification that ‘the actual cost of converting each and all of the aforesaid ships for use by the United States Navy’ refers only to the cost of the conversion features, and does not include any part of the cost of the ‘base vessel,’ and in this connection alleges and avers that the total cost of the said ships to the United States Maritime Commission was \$89,500,000, of which the said conversion costs amounted to only \$34,213,000, and the remainder of the total cost was the cost to the United States Maritime Commission of the ‘base vessel’ without the conversion features.”

Now, your Honor, if I may have a moment to review my file, I believe that concludes our case.

The Court: Do you wish a recess?

Mr. Pentz: Yes, if you will, please.

(Recess.)

Mr. Pentz: I only have one statement to make, your Honor, and that is so that there will be no misunderstanding that the record does reflect the reading of my Request for Admissions and the An-

swers, that will be deemed in the record of the case?

The Court: Very well.

Mr. Pentz: We close our case for the defendant.

Mr. Walkup: In rebuttal, your Honor, I would like to—— [150]

Mr. Collett: Pardon me——

Mr. Walkup: Pardon me, Mr. Collett.

Mr. Collett: If the Court please, I think for the purposes of the record at this time, we—the Court will recall a motion to dismiss this action was filed as to the cross defendants, United States Maritime Commission and Joseph K. Carson, Raymond S. McKeough, Admiral William W. Smith, Granville Mellon and Richard Parkhurst, as members of the United States Maritime Commission.

There has never been any service effected on any of the members of the Maritime Commission, and I move to dismiss on that ground alone.

The Court: You mean on the individuals?

Mr. Collett: On the individuals, yes.

That the action be dismissed as to the Maritime Commission, I again renew the motion that was filed as to the Maritime Commission, that it is not a proper action against the Maritime Commission; if there is any action, it would be against the United States of America as a proper party, and that further as to the United States of America there has been no case made here by any of the evidence on behalf of the cross complainants that has been now presented to the Court. There is no cause of action stated against the United States as such or the Maritime Commission, and upon all the grounds

previously urged, the motion is renewed that the cross [151] complaint should be dismissed as to the United States Maritime Commission.

Mr. Pentz: I have no objection to the dismissal of the individual defendants.

The matter of the retention of the Maritime Commission as a party defendant was gone into quite thoroughly at the time the motion was made.

The Court: Oh, yes. I don't recall if I made a ruling. It seems to me there is a proper action on the cross complaint here.

Mr. Pentz: The theory was that if there were to be a judgment in favor of Permanente Metals, since it is stipulated that the money that they might recover would be the sole property of the Maritime Commission, that their presence here is necessary, because if Permanente were here alone there would only be a dollar damage, so to speak, and thus there would be no action against the Maritime Commission.

The Court: Well, the motion to dismiss the individual members of the Maritime Commission is granted. Otherwise it is denied.

Mr. Walkup: Now, your Honor, at this time I want to offer in evidence deposition of Ivan Joyce Wanless, which was taken on behalf of the plaintiff and cross defendant, Permanente Metals Corporation, in Room 4809, Department of Commerce, in Washington, D. C., on October 3d, 1947, pursuant to a stipulation, [152] and thereafter continued and completed at a subsequent date.

Mr. Mellin: If your Honor please. we have no



objection to this deposition; we have intention of offering all of the remainder of that same deposition, which is not offered by Mr. Walkup. Unless Mr. Walkup and the Court wishes the entire deposition read into the record, we will stipulate it may all go in and be deemed read, together with the exhibits.

Mr. Walkup: What are you going to do on the question of rulings? There are a number of objections.

Mr. Mellin: The objections may be deemed to be—I mean withdrawn.

Mr. Walkup: All your objections are deemed withdrawn?

Mr. Mellin: That is right.

Mr. Walkup: Let me check further here as to my objections to cross-examination.

Mr. Collett: It begins at Page 156.

The Court: Yes. Where does the cross-examination begin?

Mr. Walkup: The cross-examination begins at Page 187, your Honor.

(Mr. Walkup looks through deposition.)

Mr. Walkup: I intended to read the whole deposition, your Honor, but the question is I want to make certain on these objections.

Well, that stipulation is satisfactory to me, your Honor, with the understanding that this can be physically copied into [153] the record by the reporter and be a part of the record as though actually read in court.

The Court: So understood.



Mr. Walkup: Now, at this time I offer in evidence the exhibits—or exhibit, rather, to the deposition of the witness Ivan Wanless which appears and is marked as Plaintiff's Exhibit HH in the back of the deposition, which is a certified copy of the Design Filing System dated October 1st, 1947, of the United States Maritime Commission as it appears on file in the records of the Commission, and it is referred to and further identified in the testimony of the witness, Ivan Wanless.

Mr. Pentz: No objection, your Honor. I understood it would be stipulated all the exhibits attached to that deposition would be deemed introduced.

Mr. Walkup: Well, I am now offering this one so there is no question it will be made a part of the testimony of the witness.

(The document referred to was marked Plaintiff's Exhibit T.)

Mr. Walkup: At this time also, your Honor, I desire to read into the record, unless a similar stipulation can be arrived at, the testimony of the witness John Bassette Maher, taken on behalf of the plaintiff and cross defendant, The Permanente Metals Corporation, in Room 4705, Department of Commerce, Washington, D. C., October 1st, [154] 1947.

Mr. Pentz: The same stipulation as to the testimony of Mr. Maher.

Mr. Walkup: I would like, your Honor, to review the cross-examination as to objections. It will save considerable time of the Court if I take a few minutes to do that, rather than having to read it.

The Court: Very well.

Mr. Walkup: Now, I would like to state, your Honor, as to the testimony of the witness, Ivan Wanless, and also as to this testimony, we deliberately did not offer this as a part of our case in chief, but because of your Honor's ruling as to the admissibility of certain other evidence, we are now offering it in rebuttal, and our position is this is likewise immaterial. And we took the deposition to have it for rebuttal only, if your Honor ruled as he did.

(Mr. Walkup looked through the deposition.)

Mr. Walkup: On further thought, it has occurred to me, your Honor, with reference to both of these depositions it may be I would desire to move to strike some of the answers given on cross-examination, or at least portions of them. I would hate to, in the interest of saving time, fail to move to strike some matter which should be stricken, if there is any such.

The Court: Didn't you note it as the depositions were taken?

Mr. Walkup: The objections were reserved and the motions— [155] I made some objections at the time as to the form of the question and other matters, but not necessarily all objections were made at the time.

The Court: Well, I see frequently where you make objection as to the form and otherwise, and the question was reframed.

Mr. Walkup: Yes. I think as to any objections

that are in there, there would be no prejudice to my client by withdrawing them. However, I am wondering as to the motions to strike testimony which has been given, and I haven't read through all the answers with that in mind.

The Court: Well, if you wish to do that, why don't you take a reasonable period of time to make any of those motions, and you might make them in writing and then I will rule on them.

Mr. Walkup: That will be very acceptable, your Honor, and I can serve counsel with a copy. There may not be any, but I do not want in the interest of time——

The Court: Five days? Will that be sufficient time?

Mr. Walkup: Yes, your Honor.

Now, also as to the testimony of the witness John Bassette Maher, I offer at this time the Plaintiff's exhibits introduced at the time of the deposition, which would be Plaintiff's V to the deposition, Plaintiff's Exhibit W to the deposition, Plaintiff's Exhibit X to the deposition, Plaintiff's [156] Exhibit Y to the deposition, Plaintiff's Exhibit Z to the deposition, Plaintiff's Exhibit AA to the deposition, Plaintiff's Exhibit BB to the deposition, Plaintiff's Exhibit CC to the deposition, Plaintiff's Exhibit DD to the deposition, Plaintiff's Exhibit EE to the deposition, Plaintiff's Exhibit GG to the deposition. I would like to check on the whereabouts of Exhibit FF. That was introduced in another part of the testimony of a different witness.

The Clerk: Did you want to mark those as one exhibit, or separately?

Mr. Walkup: I think they should probably have consecutive letters besides.

The Clerk: That is in which deposition, Maher?

Mr. Walkup: The deposition of Maher.

The Clerk: The one marked V would be U; W is V; X is——

Mr. Pentz: Mr. Clerk, will you give those a little slower so I can mark mine? V is——

The Clerk: V is marked as U; W is marked as Plaintiff's V; X is marked as Plaintiff's W; Y is marked as Plaintiff's X; Z is marked as Plaintiff's Y; AA is marked as Plaintiff's Z; BB is marked as Plaintiff's—well, that would be sort of confusing—or, did you want to do it that way? Well, we could mark it AA; that would be Plaintiff's AA as to the one marked BB. As to CC, it would be BB; as to DD, it would be CC; as to EE, it would be DD; as to GG, it would be EE, all Plaintiff's exhibits. [157]

I guess that straightens it out.

(The documents referred to were marked as indicated by the Clerk.)

Mr. Walkup: Now, I will have some other exhibits to introduce, your Honor, in rebuttal, and with the same understanding that Permanente contends they are immaterial but are offered in rebuttal in view of your Honor's ruling on the evidence position. I had intended to use the rest of the afternoon in reading these depositions, but if I can



have about five minutes, I may save the Court's time in organizing them.

The Court: Very well.

(Recess.)

Mr. Walkup: At this time, your Honor, I offer in evidence a number of delivery certificates covering vessels under Maritime Commission contract MCo-15762, certified to by the United States Maritime Commission, all of which are included under one certificate.

There was one certificate the Commission could not find in its records, and it was agreed it could be included as under this certificate, and although the Commission was not able to locate the original of that, we have a certified photostatic copy.

Mr. Pentz: No objection. Are those just for our twenty-two vessels? [158]

Mr. Walkup: No, this includes all the vessels under MCo-15762. The purpose of the introduction is to show that all the vessels constructed under that contract by Permanente Metals Corporation were delivered to and receipted for by the United States Maritime Commission, and for the text of the delivery receipt certificate as to each vessel. In other words, to further establish our point that we did not deliver these vessels to the Navy Department, but we delivered them to the Maritime Commission.

Mr. Pentz: I will stipulate to that, and why encumber the record? In other words, make the record far larger than it should be otherwise? I have never contended otherwise, that they were not delivered to the Maritime Commission.



Mr. Walkup: Possibly we could offer one of these certificates for the text; the text is the same on each, except for identifying the vessel. They are all the same type of certificate at delivery of the vessels that were entered into between Permanente Metals and the Maritime Commission at the time of delivery.

To save encumbering the record, I am very willing to introduce this one just to show the text of the receipt. The others are identical, except for the fact that they cover other vessels and other dates of delivery.

Mr. Pentz: May I see the certificate?

(Mr. Walkup handed a document to Mr. Pentz.) [159]

Mr. Pentz: I have no objection at all.

Mr. Walkup: Then we will introduce this one singly which relates to Hull Number 527, with the understanding we have similar certificates for each vessel included under Maritime Commission Contract MCo-15762.

(The document referred to was marked Plaintiff's Exhibit FF.)

Mr. Walkup: I should state that the hull numbers referred to run from Maritime Commission Hull Number 525 through 601 consecutively.

At this time I desire to introduce in evidence Exhibit G to the deposition of R. L. McDonald, which is a deposition of the Assistant Secretary of the Maritime Commission, taken in Washington, D. C., on behalf of Permanente Metals Corporation. This

exhibit is likewise introduced on the same basis as the other rebuttal exhibits of Permanente. We do not consider it material, but we offer it in rebuttal to the testimony to which we objected.

Mr. Pentz: That is the one for at least six ships for hospital ships. I understood that we had stipulated that all of the exhibits in that deposition may be deemed a part of the record. I have no objection to it.

Mr. Walkup: I would merely like to introduce it as an exhibit.

(The document referred to was marked Plaintiff's Exhibit GG.) [160]

Mr. Walkup: I next offer in evidence Exhibit P to the deposition of R. L. McDonald, with the same understanding that it is offered in rebuttal of the evidence, and that except for that fact we wouldn't offer it. We consider it irrelevant.

(The document referred to was marked Plaintiff's Exhibit HH.)

Mr. Walkup: I next offer Exhibit S to the deposition of R. L. McDonald upon the same understanding as stated with reference to the last exhibit.

(The document referred to was marked Plaintiff's exhibit II.)

Mr. Walkup: I next offer in evidence Exhibit 6 to the deposition of Captain Ralph Edward McShane, with the same understanding that it is offered in rebuttal solely.

Mr. Pentz: In connection with Exhibit 6, I

would like to make this statement, that I would have made it a part of my case except that the defendant's exhibit 8 already in this record cancelled that letter he is speaking about, and for that reason I didn't offer it.

Mr. Walkup: That is correct, except it is referred to in the previous exhibits introduced, and I want to show that it was eliminated from consideration.

(The document referred to was marked Plaintiff's Exhibit JJ.)

Mr. Walkup: I next offer in evidence Exhibit C to the [161] deposition of R. L. McDonald, with the same understanding, that it is offered in rebuttal solely, as previously stated.

(The document referred to was marked Plaintiff's Exhibit KK.)

Mr. Walkup: I next offer in evidence Exhibit 7 to the deposition of Captain Ralph Edward McShane, with the same understanding, that it is offered solely in rebuttal, as above stated.

Mr. Pentz: In connection with Exhibit 7, I make the same statement, that I did not offer it because it was cancelled by my Exhibit 8, which is already in the record.

(The document referred to was marked Plaintiff's Exhibit LL.)

Mr. Walkup: I offer in evidence next Exhibit D to the deposition of R. L. McDonald, upon the same understanding as stated with reference to the previous exhibits.

(The document referred to was marked Plaintiff's Exhibit MM.)

Mr. Walkup: I offer in evidence Exhibit A to the deposition of R. L. McDonald, upon the same basis as previously stated, that it is offered in rebuttal only.

(The document referred to was marked Plaintiff's Exhibit NN.)

Mr. Walkup: I offer in evidence Exhibit B to the deposition of R. L. McDonald, upon the same basis as stated [162] with reference to the previous exhibits.

(The document referred to was marked Plaintiff's Exhibit OO.)

Mr. Walkup: I offer in evidence Exhibit K to the deposition of R. L. McDonald, upon the same basis as stated with reference to the previous exhibits.

(The document referred to was marked Plaintiff's Exhibit PP.)

Mr. Walkup: I offer in evidence Exhibit L to the deposition of R. L. McDonald, upon the same basis as stated with reference to the previous exhibits.

(The document referred to was marked Plaintiff's Exhibit QQ.)

Mr. Walkup: I offer in evidence Exhibit O to the deposition of R. L. McDonald, upon the same basis as stated with reference to the previous exhibit.

The Clerk: Plaintiff's RR.

Mr. Walkup: I offer in evidence——

Mr. Pentz: O is already in the record.

Mr. Walkup: I beg your pardon?

Mr. Pentz: O is already in the record.

Mr. Walkup: That may be. I went over this hastily, and if we have a duplication——

Mr. Pentz: Defendant's Exhibit 4 is Plaintiff's Exhibit O in the deposition. [163]

The Clerk: All right, we will cancel that RR, then; is that all right?

Mr. Walkup: It is what number?

Mr. Pentz: Defendant's Exhibit 4 in the record in this case is the same thing as Plaintiff's Exhibit O in the deposition.

Mr. Walkup: Yes. I offer in evidence Exhibit T of the deposition of McDonald, with the same understanding as to the previous exhibits which were offered in rebuttal only.

(The document referred to was marked Plaintiff's Exhibit RR.)

Mr. Pentz: I wish to make this statement in connection with that letter, I feel it not pertinent, because it is some letter returned to be rewritten; that is all that was.

Mr. Walkup: That may be so, but to have the letters together—other letters refer to the letters that have been cancelled, and that is my purpose of offering the complete set of correspondence, even though some letters were cancelled and rewritten.



I would like to offer in evidence certain other exhibits to the deposition of R. L. McDonald, but the exhibits without the text of the deposition are meaningless, so that it would be necessary, in order to explain these exhibits, to read certain portions of the deposition of R. L. McDonald.

Now, I suggested to counsel as an expedient to save the [164] time of the Court that within the same five-day period that I am going to write to the Court about any objections or motions to strike the testimony of the witnesses Wanless and Maher, that I could write to the Court outlining the brief portions of the deposition of R. L. McDonald that I desire read into the record, in order to explain the remaining exhibits which I desire to introduce, and at the same time I could specify the deposition, number of the exhibit, and the pages of the testimony of R. L. McDonald which refer to them.

Except for that, the testimony of R. L. McDonald relates largely to identifying——

The Court: Suppose we have the understanding you may do that in five days, and opposing counsel may make any objections he cares to make within the five days, or designate any further portions of the testimony he desires in the record. Is that satisfactory?

Mr. Walkup: That is entirely satisfactory, your Honor.

Mr. Pentz: That is satisfactory.

Mr. Walkup: Now, based upon that understanding, then, the Plaintiff and Cross-Defendant Permanente Metals rests its case.

The Court: Any sur-rebuttal?

Mr. Pentz: No sur-rebuttal.

The Court: Now, of course, Gentlemen, I understand your respective theories of the parties. You have a mass of [165] evidence here, including depositions. I don't know whether you wish to set forth your respective viewpoints on that evidence or not; I don't know that there is any occasion to go into the legal problems any further, but there may be factual questions that you want to call specifically to my attention. Are there or are there not?

Mr. Pentz: Not in my case, your Honor. I feel it pretty well speaks for itself.

Mr. Walkup: Our position is essentially a legal position, your Honor——

The Court: I appreciate that.

Mr. Walkup: Yes, and if your Honor decides against us on that point, we would still desire to point out the pertinent bits of evidence that we think still permits us to recover.

Now, I have done that briefly in the pre-trial statement of position, stating that although we deemed certain evidence immaterial, if your Honor considers it we still think it confirms our position.

The Court: Do you care to amplify that by any memorandum?

Mr. Walkup: I think it might be desirable, because it is such a mass of evidence for the Court to thumb through and——

The Court: I think it would be helpful if you could set forth at least the highlights.

Mr. Walkup: Yes.

The Court: —in this evidence. And how long will it [166] take to do that after you get this evidence in? The evidence will be in in ten days then.

Mr. Walkup: Well, my particular situation is one that Mr. Pentz is familiar with, because it came up when the case was set for trial. I am starting with a jury trial next week that will take three weeks, and am leaving for the east, with the understanding that if we have to get a continuance or something that would accommodate me in that regard.

The Court: What is your suggestion, then, as to the time you wish?

Mr. Walkup: If I could have a week after returning from the east, which would be about, say, by the end of March, if that is not too long? If it is——

The Court: Of course, the case has been pending here for a long time. I believe it was one of Judge St. Sure's cases originally, was it not?

Mr. Walkup: Yes.

The Court: And I believe another month won't be much out of the way.

Mr. Pentz: We just hope that because of your Honor's crowded calendar that you don't forget about our case.

The Court: Well, you gentlemen know what we have been up against here lately.

Well, if you have to the end of March, then how much time would you want, Mr. Pentz, to file yours? [167]

Mr. Pentz: Well, two weeks would be more than ample.

The Court: I will try not to take more than two weeks after that.

Mr. Pentz: I think that this, so that we have an understanding, that this, in effect, amounts to a written argument in regard to this testimony?

The Court: Yes, on the factual situation. I don't think you need to go into the legal questions any further, unless you feel you should amplify that further. I think you have covered that very comprehensively in your briefs.

Then the plaintiff will have until the end of March, that is the 31st day of March, and you will have to the 15th day of April in which to file your closing memorandum, and then the matter will stand submitted.

Mr. Walkup: Thank you, your Honor.

Mr. Pentz: Thank you.

[Endorsed]: Filed April 28, 1950. [168]

[Title of District Court and Cause.]

DEPOSITIONS ON BEHALF OF PLAINTIFF  
AND CROSS-DEFENDANT, THE PERMA-  
NENTE METALS CORPORATION, A COR-  
PORATION

Stipulation Changing Time and  
Place for Taking Deposition

It Is Hereby Stipulated, this 1st day of October, 1947, between Bruce Walkup, one of the attorneys of record for plaintiff and cross-defendant, The Permanente Metals Corporation, a corporation, and Elliott H. Pentz, one of the attorneys of record for the defendants and cross-complainants, John Urquhart Birnie, an individual doing business as Birnie Electric Company, and Massachusetts Bonding and Insurance Company, a corporation, that the deposition of the Chairman of the United States Maritime Commission, Washington, D. C., or such person or persons as he may designate in his behalf, heretofore noticed to be taken on September 26, 1947, commencing at 10:00 o'clock a.m., Eastern Daylight Time, before John P. Labofish, Notary Public, or some other duly qualified notary public at Room 4704, Commerce Building, Washington, D. C., and thereafter continued by written stipulation to September 29, 1947, at the same time and place, and thereafter continued by written stipulation to September 30, 1947, at the same time and place, shall be taken on October 1st, 1947, commencing at 10:00 o'clock a.m., Eastern Standard Time, before said



Notary Public, or some other duly qualified Notary Public at Room 4852, Commerce Building, Washington, D. C. or in such other room, if any, to which said deposition may be adjourned.

It is further stipulated, that the aforesaid deposition shall otherwise be taken in all respects in the manner heretofore noticed, excepting as to the time and place thereof as heretofore stipulated herein.

BRUCE WALKUP,  
WILLIS S. SLUSSER,  
THELEN, MARRIN, JOHNSON  
& BRIDGES.

By /s/ BRUCE WALKUP,  
Attorneys for plaintiff and cross-defendant, The  
Permanente Metals Corporation, a Corporation.

HILL, MORGAN & FARRER,  
TINNING & DeLAP,  
MELLIN AND HANSCOM.

By /s/ ELLIOTT H. PENTZ,  
Attorneys for Defendants and Cross-Complainants,  
John Urquhart Birnie, an Individual Doing  
Business as Birnie Electric Company, and  
Massachusetts Bonding and Insurance Com-  
pany, a Corporation.

Appearances:

BRUCE WALKUP,

On behalf of Bruce Walkup; Willis S. Slusser; Thelen, Marrin, Johnson & Bridges, Attorneys for Plaintiff and Cross-Defendant, The Permanente Metals Corporation, a corporation.

ELLIOTT H. PENTZ,

On behalf of Hill, Morgan & Farrer; Tinning DeLap; Mellin and Hanscom, Attorneys for Defendants and Cross-Complainants, John Urquhart Birnie, individual doing business as Birnie Electric Company, and Massachusetts Bonding and Insurance Company, a corporation.

Deposition of R. L. McDonald, taken on behalf of the plaintiff and cross-defendant, The Permanente Metals Corporation, a corporation, in Room 4852, Department of Commerce, in Washington, D. C., at ten o'clock a.m., on the 1st day of October, 1947, by Chloe S. MacReynolds, Court Reporter, before John P. Labofish, a Notary Public within and for the District of Columbia, pursuant to the annexed stipulation.

R. L. McDONALD

a witness produced on behalf of the plaintiff and cross-defendant, The Permanente Metals Corporation, a corporation, being first duly sworn to state

(Deposition of R. L. McDonald.)

the truth, the whole truth, and nothing but the truth, testified on his oath as follows:

Mr. Walkup: May the record show that this deposition is taken at this time and place pursuant to written stipulation which I now hand to the reporter and request that it be attached to the original deposition.

It is perfectly agreeable with me, Mr. Pentz, that the [2\*] Notary Public, having sworn the witness, may withdraw and it may be deemed that he remained in attendance, and that if the witness refuses to answer any question that the Notary Public instruct him to answer, if you care to so stipulate.

Mr. Pentz: I don't care to, Mr. Walkup.

Mr. Walkup: You would prefer to have him remain in attendance?

Mr. Pentz: Yes, I would rather have him remain.

Mr. Walkup: All right.

Let the record show that the appearances at the deposition this morning are as follows:

Elliott H. Pentz, appearing on behalf of Hill, Morgan & Farrer; Tinning & DeLap; and Mellin and Hanscom, Attorneys for defendants and cross-complainants, John Urquhart Birnie, an individual doing business as Birnie Electric Company, and Massachusetts Bonding and Insurance Company, a corporation; and Bruce Walkup, appearing on behalf of Bruce Walkup; Willis S. Slusser; and Thelen, Marrin, Johnson & Bridges, Attorneys for plaintiff and cross-defendant, The Permanente Metals Corporation, a corporation.

\* Page numbering appearing at top of page of original Reporter's Transcript of Record

(Deposition of R. L. McDonald.)

Let the record show that other than the Notary Public, the Reporter and the witness, there were no other persons present than Mr. Walkup and Mr. Pentz.

I would like the record to show also that I served upon the Attorney General, by registered mail, a copy of the notice [3] of the deposition, as it was originally scheduled, and prior to the various continuances which have advanced the date of the taking of the depositions to this time and place.

#### Direct Examination

By Mr. Walkup:

Q. What is your name, sir?

A. R. L. McDonald.

Q. What is your official position?

A. I am Assistant Secretary of the Maritime Commission.

Q. Where do you reside?

A. Silver Spring, Maryland.

Q. Have you been designated by the Chairman of the United States Maritime Commission to appear and testify on behalf of the Chairman, pursuant to the notice of deposition which specified that either the Chairman of the Commission or such other person or persons as he should designate to testify on his behalf should give certain testimony in these proceedings?

A. I can furnish the records of the Commission, if that is what you want.

Q. My question is have you been designated?

(Deposition of R. L. McDonald.)

A. I have been, yes.

Q. Mr. McDonald, I hand you a document bearing date of March 9, 1944, and request you please to identify that document.

A. Do you want me to read the caption [4] here.

Q. No.

A. This is part of the official records of the Maritime Commission. What other identification do you want?

Q. Will you please state what type of document that is?

A. It is a memorandum which was approved by the Maritime Commission at a meeting April 13, 1944.

Q. In the practice followed in the Commission is a record customarily kept of the proceedings of the Commission?

A. A record is kept.

Q. And pursuant to what order is the record kept?

A. Section 201(c) Merchant Marine Act of 1936.

Q. The document dated March 9, 1944, which I have just showed you, is a memorandum of certain official action of the Commission approved by the Commission?

A. That is right.

Q. As of what date was it approved by the Commission?

A. April 13, 1944.

Mr. Walkup: I would like to have the reporter identify that document as Exhibit A on behalf of plaintiff and cross-defendant, The Permanente Metals Corporation.



(Deposition of R. L. McDonald.)

(Certified photostatic copy of memorandum approved by United States Maritime Commission at meeting on April 13, 1944, marked for identification as Plaintiff and Cross-Defendant's, The Permanente Metals Corporation, Exhibit A.) [5]

Q. (By Mr. Walkup): Do the actions of the Maritime Commission, such as Plaintiff's Exhibit A for identification, constitute official records of the Maritime Commission? A. They do.

Mr. Walkup: I offer this in evidence as Plaintiff's Exhibit A, and for the purposes of convenience, instead of saying in each case "Plaintiff's and Cross-Defendant's" I will merely state "Plaintiff's" for brevity. Is that agreeable, Mr. Pentz?

Mr. Pentz: That is agreeable on the assumption it is likewise agreed that in cases where I did not give the full party designations in the deposition taken of the Secretary of the Navy that we have the same understanding in that case as well as in this.

Mr. Walkup: Certainly; and we might also save some time if when I refer to The Permanente Metals Corporation, instead of stating the full name I merely call it "Permanente."

Mr. Pentz: Very well, with the like understanding that insofar as any reference I made to the parties in the deposition of the Secretary of the Navy that we have a similar understanding.

Mr. Walkup: Certainly.

Mr. Pentz: I wish the record to show that ordi-

(Deposition of R. L. McDonald.)

narily I would object to the introduction of Plaintiff's Exhibit A, [6] and similarly would object to the introduction of any other exhibits that may be offered, on the ground that they should be read into the record.

However, if it is satisfactory with you, Mr. Walkup, to agree with me that the Commissioner is considered authorized to procure for our several uses correct copies or a copy of these exhibits, then it is agreeable to me that the exhibits may go into the record without being read.

Mr. Walkup: Certainly; that is in line with our previous discussion on this subject. We also will need copies because we do not have extra copies of the documents which are being introduced.

I suggest that we have the notary procure photostatic copies of the various exhibits and obtain the necessary number of sets for the attachment to the copies of the deposition and for distribution to counsel.

Mr. Pentz: That is agreeable.

(The memorandum heretofore marked Plaintiff's Exhibit A for identification, was offered in evidence as Plaintiff's Exhibit A.)

Q. (By Mr. Walkup): Mr. McDonald, I hand you now a document bearing date of May 22, 1944, and ask you to kindly identify that document.

A. This is a memorandum addressed to the Commission by Mr. H. L. Vickery, formerly a Commissioner of the Maritime Commission, which was con-

(Deposition of R. L. McDonald.)

sidered at a meeting held on May 30, [7] 1944, and approved by the Commission on that date.

Mr. Walkup: Would you kindly mark that as Plaintiff's Exhibit B for identification?

(Certified photostatic copy of memorandum approved by United States Maritime Commission at meeting on May 30, 1944, marked for identification as Plaintiff's Exhibit B.)

Q. (By Mr. Walkup): Mr. McDonald, would your testimony as to the official nature of this document, Plaintiff's Exhibit B, be the same as your testimony concerning Plaintiff's Exhibit A?

A. Yes.

Q. And this action of the Commission is an official record of the United States Maritime Commission?

A. That is right.

Mr. Walkup: I offer this document in evidence as Plaintiff's Exhibit B.

(The memorandum heretofore marked Plaintiff's Exhibit B for identification, was offered in evidence as Plaintiff's Exhibit B.)

Q. (By Mr. Walkup): Mr. McDonald, referring again to Plaintiff's Exhibit B, is the original of this document in the possession and under the control of the Secretary of the United States Maritime Commission?

A. It is.

Q. And is that also true as to the original [8] of Plaintiff's Exhibit A?

A. It is.

Q. I hand you now a document bearing date

(Deposition of R. L. McDonald.)

November 13, 1945, and ask you please to identify that document.

A. This is a memorandum submitted to the Commission by the Director of our Division of Vessel Disposal and Government Aids, dated November 13, 1945, on the subject "Post-war Navy and United States Merchant Fleet," which was considered by the Commission and approved at a meeting on November 13, 1945.

Q. Is that a record of official proceedings of the United States Maritime Commission?

A. It is.

Q. And is that an official record of the United States Maritime Commission? A. It is.

Q. Is it in the possession and under the control of the Secretary of the United States Maritime Commission? A. It is.

Mr. Walkup: Would you please mark this Plaintiff's Exhibit C for identification?

(Certified photostatic copy of memorandum approved by United States Maritime Commission at meeting on November 13, 1945, marked for identification as Plaintiff's Exhibit C.) [9]

Mr. Walkup: I offer this in evidence as Plaintiff's Exhibit C.

(The memorandum heretofore marked Plaintiff's Exhibit C for identification, was offered in evidence as Plaintiff's Exhibit C.)

Q. (By Mr. Walkup): I hand you now a document bearing date January 7, 1946, and ask you please to identify that document.

(Deposition of R. L. McDonald.)

A. This is a memorandum from the Division of Vessel Disposal and Government Aids, dated January 7, 1946, addressed to the Maritime Commission on the subject "Navy Post-war Fleet." It was considered and approved by the Commission at a meeting on January 10, 1946.

Q. Is that a Division of the Maritime Commission?

A. This is a Division of the Maritime Commission.

Q. Does the document indicate on there the fact of approval by the Commission?

A. It does.

Q. And how is that shown on the document?

A. That bears the signature of the Secretary of the Commission and it was acted on and approved at this meeting on January 10, 1946.

Q. That is stamped on page 3 of the memorandum?      A. That is right.

Q. Is this record, of which this is a copy, an official [10] record of the United States Maritime Commission?      A. It is.

Q. And is the original of this document in the possession and under the control of the Secretary of the Maritime Commission?      A. It is.

Mr. Walkup: Would you please mark this as Plaintiff's Exhibit D for identification?

(Certified photostatic copy of memorandum entitled "Navy Post-war Fleet," approved by United States Maritime Commission at meeting on January 10, 1946, marked for identification as Plaintiff's Exhibit D.)



(Deposition of R. L. McDonald.)

Mr. Walkup: I offer this in evidence as Plaintiff's Exhibit D.

(The memorandum heretofore marked Plaintiff's Exhibit D for identification, was offered in evidence as Plaintiff's Exhibit D.)

Q. (By Mr. Walkup): Now, referring to Plaintiff's Exhibits A to D, inclusive, those are all documents falling in the same category, are they not; that is, records of proceedings of the United States Maritime Commission?

A. That is right. They all show in the minutes of the Commission formally written up and retained as part of the official records of the Maritime Commission.

Q. And all of those records are kept pursuant to the [11] requirements of law?

A. That is right.

Q. And all of those records of proceedings are under the custody and control of the Secretary of the United States Maritime Commission?

A. That is correct.

Q. And all of those records are official records of the United States Maritime Commission?

A. They are.

Q. I hand you now a document bearing date of February 13, 1947, and ask you please to identify that document.

A. This is also a memorandum submitted to the Commission for consideration by the Managing Director Finance Department, dated February 13,

(Deposition of R. L. McDonald.)

1947, and approved by this Commission at a meeting on February 25, 1947.

Mr. Walkup: Will you please mark that as Plaintiff's Exhibit E for identification?

(Certified photostatic copy of memorandum dated February 13, 1947, approved by United States Maritime Commission at meeting held February 25, 1947, marked for identification as Plaintiff's Exhibit E.)

Q. (By Mr. Walkup): Is this document an official record of the United States Maritime Commission? A. It is.

Q. And is the original of this document in the possession [12] and under the control of the Secretary of the United States Maritime Commission?

A. It is.

Q. Is this record a record of official proceedings of the Maritime Commission pursuant to law?

A. It is.

Q. And is the requirement for the keeping of this record the same as that to which you have previously testified for records of Commission action?

A. That is right.

Q. Is it true that this document falls in the same category of Commission records as Plaintiff's Exhibits A to D, inclusive, concerning which you have previously testified? A. That is right.

Mr. Walkup: I offer this in evidence as Plaintiff's Exhibit E.

(Deposition of R. L. McDonald.)

(The memorandum heretofore marked Plaintiff's Exhibit E for identification, was offered in evidence as Plaintiff's Exhibit E.)

Q. (By Mr. Walkup): I hand you now a document bearing date of March 3, 1947, and request that you please identify that document.

A. This is a copy of a letter sent by Mr. A. J. Williams, Secretary, Maritime Commission, dated March 3, 1947, to the Birnie Electric Company, Los Angeles. [13]

Mr. Walkup: Would you please mark that as Plaintiff's Exhibit F for identification?

(Copy of letter dated March 3, 1947, to Birnie Electric Company from A. J. Williams, Secretary, Maritime Commission, marked for identification as Plaintiff's Exhibit F.)

Q. (By Mr. Walkup): Is the copy of this letter, of which this is itself a copy, on file in the files of the Secretary of the United States Maritime Commission?

A. It is. The Secretary is the official custodian of all records of the Maritime Commission.

Q. Was this letter of March 3, 1947, which you have identified, sent by the Secretary of the Commission in the line of his official duties as such?

A. It was.

Q. And does this copy of the letter constitute an official record of the United States Maritime Commission? A. I would think so, yes.

Q. Well, for the purpose of these proceedings,

(Deposition of R. L. McDonald.)

rather than stating it in the term of a thought, could you state it as a fact?

A. Well, I will state it as a fact, yes; just like any other piece of paper might be around the place.

Mr. Walkup: Mr. Pentz, I want to ask you if you would be willing to stipulate that the letter of March 3, 1947, [14] addressed to Birnie Electric Company, which is Plaintiff's Exhibit F for identification, was in fact received by Birnie Electric Company subsequent to March 3, 1947?

Mr. Pentz: I am unable to stipulate to anything in this case, Mr. Walkup. I do not possess the authority to do it.

Q. (By Mr. Walkup): Would you please state, Mr. McDonald, what the procedure in the Commission is as to the mailing of outgoing mail from the Secretary of the Commission to some party outside of the Commission?

A. What do you mean by that?

Q. Would you please state what, in the ordinary procedure of the Commission, what procedure would be followed with reference to the mailing of a letter such as the letter of March 3, 1947?

A. Well, of course, the letter would be presented to Mr. Williams for signature, in his official capacity, which was done in this case, and he, of course, would sign it, and it would be turned over to our Mail Unit, which is a part of the Office of the Secretary, and, of course, be handled like any other piece of mail, assuming that this was not registered,

(Deposition of R. L. McDonald.)

and would be mailed, and, of course, we expect delivery in due course.

Q. What is the mailing procedure in the Secretary's office? How does the actual handling of the outgoing mail [15] take place?

A. It was turned over by the Secretary's office itself to the Mail Division, the Unit of the Division, and that in turn handles it. The mail is put in an envelope and, of course, dropped in the mail box.

Q. You are familiar with that procedure?

A. Yes.

Q. Of your knowledge? A. Yes, I am.

Q. And that procedure is under the direction and control of the Secretary's Office of the Commission? A. That is right.

Q. Is it possible for you to tell in the case of any particular letter whether it was actually physically deposited in the United States mail, other than by the following of the general procedure?

A. That is the only way we could determine whether it was mailed or not. We expected it to be mailed, in compliance with instructions of the Office.

Q. Referring to the letter of March 3, 1947, do you have any knowledge that the customary procedure was not followed as to the mailing of the letter? A. I have not.

Mr. Walkup: I offer in evidence Plaintiff's Exhibit F.

(The letter heretofore marked Plaintiff's Exhibit F for identification, [16] was offered in evidence as Plaintiff's Exhibit F.)



(Deposition of R. L. McDonald.)

Q. (By Mr. Walkup): Mr. McDonald, I now hand you a document bearing date of 14 April, 1944. Would you kindly identify that document?

A. This is a copy of a letter signed by General Marshall, as Chief of Staff, U. S. Army, for the Joint Chiefs of Staff, addressed to Admiral Land, and the original of this is on file with the Maritime Commission.

Mr. Walkup: Would you please mark that as Plaintiff's Exhibit G for identification?

(Copy of letter dated 14 April, 1944, to Admiral E. S. Land, signed G. C. Marshall, Chief of Staff, U. S. Army, marked for identification as Plaintiff's Exhibit G.)

Q. (By Mr. Walkup): Is the original of this letter on file in the files of the Secretary of the United States Maritime Commission?

A. To the best of my knowledge, it is.

Q. Is the receiving of such communications part of the official duties of the Chairman of the United States Maritime Commission? A. Yes, sir.

Q. And is this letter of 14 April, 1944, an official record of the United States Maritime Commission?

A. It is. It is on file among the official records of [17] the Maritime Commission.

Mr. Walkup: I offer this in evidence as Plaintiff's Exhibit G.

(Copy of letter heretofore marked Plaintiff's

(Deposition of R. L. McDonald.)

Exhibit G for identification, was offered in evidence as Plaintiff's Exhibit G.)

Q. (By Mr. Walkup): I hand you now document bearing date of December 10, 1943, and ask that you please identify that document.

A. This is a copy of a letter dated December 10, 1943, from the Navy Department, Bureau of Ships, addressed to the Chairman of the Maritime Commission.

Mr. Walkup: Would you please mark that as Plaintiff's Exhibit H for identification?

(Certified photostatic copy of letter, dated December 10, 1943, to the Chairman, U. S. Maritime Commission, from C. L. Brand, by direction of Chief of Bureau, Bureau of Ships, marked for identification as Plaintiff's Exhibit H.)

Q. (By Mr. Walkup): Is the letter, of which this is a copy, an official record of the United States Maritime Commission? A. It is.

Q. And does the duty of the Chairman of the United States Maritime Commission include the receiving of correspondence of this nature from other branches of the Federal [18] Government?

A. It does.

Q. And is the original of this document under the direction, supervision, and control of the Secretary of the United States Maritime Commission?

A. It is.

(Deposition of R. L. McDonald.)

Mr. Walkup: I offer this in evidence as Plaintiff's Exhibit H.

(The letter heretofore marked for identification as Plaintiff's Exhibit H, was offered in evidence as Plaintiff's Exhibit H.)

Q. (By Mr. Walkup): I hand you now a letter dated 9 November, 1943, and request you to identify that document.

A. This is a letter from Admiral William D. Leahy, United States Navy, dated 9 November, 1943, on the letterhead of The Joint Chiefs of Staff, addressed to Admiral Land as Chairman of the Maritime Commission.

Mr. Walkup: Would you please mark that as Plaintiff's Exhibit I for identification?

(Certified photostatic copy of letter dated 9 November, 1943, to Admiral E. S. Land, from Admiral William D. Leahy, U. S. Navy, marked for identification as Plaintiff's Exhibit I.) [19]

Q. (By Mr. Walkup): Is the letter, of which this is a copy, on file in the records of the United States Maritime Commission? A. It is.

Q. And is it an official record of the United States Maritime Commission?

A. It is an official record of the United States Maritime Commission.

Q. Do the duties of the Chairman of the United States Maritime Commission include the receiving

(Deposition of R. L. McDonald.)

of official communications of this character from other branches of the Federal Government?

A. They do.

Mr. Walkup: I offer this in evidence as Plaintiff's Exhibit 1.

(Copy of letter heretofore marked Plaintiff's Exhibit 1 for identification, was offered in evidence as Plaintiff's Exhibit 1.)

Q. (By Mr. Walkup): I hand you a document bearing date 27 September, 1944, and ask you please to identify that document.

A. This is a letter dated September 27, 1944, from Rear Admiral W. W. Smith, United States Navy, addressed to the Chairman of the Maritime Commission.

Mr. Walkup: Will you please mark that as Plaintiff's [20] Exhibit J for identification?

(Certified photostatic copy of letter dated September 27, 1944, to Chairman, Maritime Commission, from W. W. Smith, Rear Admiral, U. S. Navy, marked for identification as Plaintiff's Exhibit J.)

Q. (By Mr. Walkup): Is the original letter, of which this is a copy, on file with the Secretary of the Maritime Commission? A. It is.

Q. Is the original letter an official record of the United States Maritime Commission?

A. It is.

Q. Do the duties of the Chairman of the United

(Deposition of R. L. McDonald.)

States Maritime Commission include the receiving of communications of this character from other branches of the Federal Government?

A. They do.

Mr. Walkup: I offer this in evidence as Plaintiff's Exhibit J.

(The letter heretofore marked for identification as Plaintiff's Exhibit J, was offered in evidence as Plaintiff's Exhibit J.)

Q. (By Mr. Walkup): I hand you now a document bearing date June 10, 1944, and ask you kindly to identify that document.

A. This is a memorandum dated June 10, 1944, from the Maritime Commission Budget Officer to the Director of the [21] Bureau of Technical Division.

Q. Does that refer to the Technical Division of the Commission?

A. Of the Maritime Commission. It is an inter-office memorandum.

Mr. Walkup: Will you mark that for identification as Plaintiff's Exhibit K?

(Certified photostatic copy of memorandum dated June 10, 1944, to Director, Technical Division, Budget Officer, signed William U. Kirsch, Budget Officer, marked for identification as Plaintiff's Exhibit K.)

Q. (By Mr. Walkup): Referring to Plaintiff's Exhibit K for identification will you please state



(Deposition of R. L. McDonald.)

whether or not the making of such inter-office memoranda is one of the official duties of the Budget Officer of the United States Maritime Commission?      A. It is.

Q. And would the making of an inter-office memorandum such as this be done in the regular course of official duties of the Budget Officer?

A. It would be.

Q. Is the original memorandum, of which this is a copy, on file in the official files and records of the Maritime Commission?      A. It is. [22]

Q. And is this an official record of the Maritime Commission?      A. I would say so, yes.

Mr. Walkup: I offer this in evidence as Plaintiff's Exhibit K.

(The memorandum heretofore marked Plaintiff's Exhibit K for identification, was offered in evidence as Plaintiff's Exhibit K.)

Q. (By Mr. Walkup): Mr. McDonald, I hand you now a document bearing date of March 16, 1944, and ask you please to identify the document.

A. This is an inter-office memorandum dated March 16, 1944, from the Budget Officer to Mr. Huntington T. Morse, Assistant to the Chairman.

Q. Mr. Morse is Assistant to the Chairman of the Maritime Commission?

A. Of the Maritime Commission, yes.

Mr. Walkup: Would you please mark this for identification as Plaintiff's Exhibit L?

(Deposition of R. L. McDonald.)

(Certified photostatic copy of inter-office memorandum, March 16, 1944, to Huntington T. Morse, Asst. to Chairman, from William U. Kirsch, Budget Officer, marked for identification as Plaintiff's Exhibit L.)

Q. (By Mr. Walkup): Mr. McDonald, would your testimony concerning the [23] previous exhibit, Exhibit K, be the same as to the requirement that the Budget Officer keeps that inter-office memorandum in the regular course of his Commission business? A. It would be, yes.

Q. And is the original of this inter-office memorandum on file in the records of the Commission?

A. It is.

Q. And does it constitute an official record of the Commission? A. It does.

Mr. Walkup: I offer this in evidence as Plaintiff's Exhibit L.

(Inter-office memorandum heretofore marked Plaintiff's Exhibit L for identification, was offered in evidence as Plaintiff's Exhibit L.)

Q. (By Mr. Walkup): I hand you now a document bearing date of November 13, 1944, and request that you identify that document.

A. This is a copy of a letter dated November 13, 1944, from Admiral E. S. Land, Chairman of the Maritime Commission, to Vice Admiral F. J. Horne, United States Navy, Vice Chief of Naval Operations.

(Deposition of R. L. McDonald.)

Mr. Walkup: Please mark this for identification as Plaintiff's Exhibit M.

(Certified photostatic copy of letter dated November 13, 1944, from Admiral E. S. Land to Vice Admiral F. J. [24] Horne, marked for identification as Plaintiff's Exhibit M.)

Q. (By Mr. Walkup): Referring to Plaintiff's Exhibit M for identification, is the copy of this letter, of which Exhibit M for identification is a copy, on file among the official records of the Maritime Commission? A. It is.

Q. And do the duties of the Chairman of the Maritime Commission include the sending of letters to other branches of the Federal Government?

A. They do.

Q. And was the letter of November 13, 1944, a letter sent by the Chairman of the Commission in the course of his official duties as such?

A. It was.

Mr. Walkup: I offer this in evidence as Plaintiff's Exhibit M.

(Copy of letter heretofore marked for identification as Plaintiff's Exhibit M, was offered in evidence as Plaintiff's Exhibit M.)

Q. (By Mr. Walkup): Mr. McDonald, I hand you now a document bearing certification of the Secretary of the United States Maritime Commission under date of September 30, 1947, and consisting of various documents, bearing date of December

(Deposition of R. L. McDonald.)

6, 1943, [25] December 11, 1943, April 25, 1944, and June 3, 1944.

Would you please identify first the document bearing date of December 6, 1943?

A. This is a letter addressed to the Secretary of the Navy by Admiral E. S. Land, Chairman of the Maritime Commission, dated December 6, 1943.

Q. Would you now please identify the document bearing date of December 11, 1943?

A. This letter is addressed to the Secretary of the Navy by Admiral Land, dated December 11, 1943.

Q. Would you please now identify the document bearing date of April 25, 1944?

A. This is a letter addressed to the Secretary of the Navy by Admiral Land, as Chairman of the Maritime Commission, dated April 25, 1944.

Q. Would you please now identify the document bearing date of June 3, 1944?

A. This is a letter addressed to the Secretary of the Navy by Admiral E. S. Land, as Chairman of the Maritime Commission, dated June 3, 1944.

Mr. Walkup: Would you kindly mark these four letters for identification, and I would suggest that they each be given a separate letter for identification, starting with our next letter that is available.

(Certified photostatic copy of letter dated December 6, 1943, to the [26] Secretary of the Navy from Admiral E. S. Land, Chairman, Maritime Commission, marked for identification as Plaintiff's Exhibit N.)

(Deposition of R. L. McDonald.)

(Certified photostatic copy of letter dated December 11, 1943, to the Secretary of the Navy, signed by Admiral E. S. Land, Chairman, marked for identification as Plaintiff's Exhibit O.)

(Certified photostatic copy of letter dated April 25, 1944, to the Secretary of the Navy, signed Admiral E. S. Land, Chairman, marked for identification Plaintiff's Exhibit P.)

(Certified photostatic copy of letter dated June 3, 1944, to the Secretary of the Navy, signed Admiral E. S. Land, Chairman, marked for identification as Plaintiff's Exhibit Q.)

Mr. Walkup: These have now been marked so that Exhibit N is the letter of December 6, 1943; the letter of December 11, 1943, is marked as Plaintiff's Exhibit O; the letter of April 25, 1944, is marked as Plaintiff's Exhibit P; and the letter of June 3, 1944, is marked for identification as Plaintiff's Exhibit Q.

Q. (By Mr. Walkup): Referring now to each of these four letters, are they all letters from the Chairman of the Commission to the Secretary of the Navy? A. They are.

Q. And were they all written by the Chairman of the Commission in the official course of his duties as such? [27] A. They were.

Q. Is the copy of each of these letters, of which



(Deposition of R. L. McDonald.)

the exhibits are in turn copies, on file with the Secretary of the Commission?      A. They are.

Q. And are each of the letters, Plaintiff's Exhibits N to Q, inclusive, official records of the United States Maritime Commission?

A. They are.

Mr. Walkup: I offer these in evidence as Plaintiff's Exhibit N, Plaintiff's Exhibit O, Plaintiff's Exhibit P, and Plaintiff's Exhibit Q, respectively, and I make the offer apply to each letter independently.

(The letters heretofore marked Plaintiff's Exhibits N to Q, inclusive, for identification, were offered in evidence as Plaintiff's Exhibits N to Q, inclusive.)

Q. (By Mr. Walkup): Mr. McDonald, I hand you now a document certified by the Secretary of the Commission under date of September 30, 1947, which in turn contains documents bearing date of February 29, 1944; May 25, 1944; June 17, 1944, and July 3, 1944.

Would you please identify each of the four documents bearing dates as just described?

A. The first letter is dated 29 February, 1944, from the Secretary of the Navy, addressed to the Chairman of the [28] United States Maritime Commission.

The next letter is dated 25 May, 1944, from the Secretary of the Navy to the Chairman of the Maritime Commission.

(Deposition of R. L. McDonald.)

The next is a letter dated 17 June, 1944, from the Secretary of the Navy to the Chairman of the Maritime Commission.

The fourth letter is dated 3 July, 1944, from the Secretary of the Navy to the Chairman of the Maritime Commission.

Mr. Walkup: Will you please mark those for identification as Plaintiff's Exhibits next in order, each letter having a separate letter designated.

(Certified photostatic copy of letter dated February 29, 1944, to the Chairman, U. S. Maritime Commission, from the Secretary of the Navy, was marked for identification as Plaintiff's Exhibit R.)

(Certified photostatic copy of letter dated 25 May, 1944, to the Chairman, U. S. Maritime Commission, from the Secretary of the Navy, was marked for identification as Plaintiff's Exhibit S.)

(Certified photostatic copy of letter dated 17 June, 1944, to the Chairman, U. S. Maritime Commission, from the Secretary of the Navy, was marked for identification as Plaintiff's Exhibit T.)

(Certified photostatic copy of letter dated 3 July, 1944, to the Chairman, U. S. Maritime Commission, from the Secretary of the Navy, was marked Plaintiff's Exhibit U for identification.)

(Deposition of R. L. McDonald.)

Mr. Walkup: The reporter has now marked these four [29] documents as follows:

The letter of 29 February, 1944, as Plaintiff's Exhibit R for identification;

The letter of 25 May, 1944, as Plaintiff's Exhibit S for identification;

The letter of June 17, 1944, as Plaintiff's Exhibit T for identification;

The letter of 3 July, 1944, as Plaintiff's Exhibit U for identification.

Q. (By Mr. Walkup): Are the original letters, of which these four exhibits, Plaintiff's Exhibits R to U, inclusive, are photostatic copies, in the possession and under the control of the Secretary of the Maritime Commission? A. They are.

Q. Were these letters, Plaintiff's Exhibits R to U, inclusive, received by the Chairman of the United States Maritime Commission in the course of his official duties as such? A. They were.

Q. And are these four letters, copies of which are Exhibits R to U, inclusive, official records of the United States Maritime Commission?

A. They are.

Q. Do the duties of the Chairman of the United States [30] Maritime Commission include the receiving of official communications from other branches of the Federal Government, and particularly from the Secretary of the Navy?

A. They do.

Mr. Walkup: I offer these four documents now identified as Plaintiff's Exhibits R to U, in-

(Deposition of R. L. McDonald.)

clusive, in evidence as Plaintiff's Exhibits R to U, inclusive, and the offer is intended as an independent offer of each letter separately, merely lumping them together for convenience and brevity.

Do you make any objection on the ground I didn't offer each one separately?

Mr. Pentz: None whatsoever.

(The letters heretofore marked as Plaintiff's Exhibits R to U, inclusive, for identification, were offered in evidence as Plaintiff's Exhibits R, S, T and U.)

Mr. Walkup: That constitutes the direct examination of the witness, Mr. Pentz.

Mr. Pentz: May we go off the record?

(A discussion off the record was had.)

Mr. Walkup: Will the Notary Public please adjourn this hearing until nine o'clock tomorrow morning?

The Notary Public: This hearing is adjourned until nine o'clock tomorrow morning, October 2, 1947, and you will return without a further subpoena, Mr. McDonald.

Mr. Walkup: It is hereby stipulated that Mr. Pentz may [31] have access to the exhibits which have been introduced at the deposition this morning and may make arrangements with the Notary Public to obtain such access to the exhibits between now and the time of the adjourned session of the deposition, which will be tomorrow morning at nine

(Deposition of R. L. McDonald.)

o'clock, for the purpose of study and examination of the exhibits.

Mr. Pentz: It is so stipulated.

(Thereupon, at 12:15 o'clock p.m., the further taking of this deposition was adjourned to Thursday, October 2, 1947, at 9:00 o'clock a.m.)

Thursday, October 2, 1947

(The further taking of the deposition of the witness R. L. McDonald was resumed at 9:00 o'clock a.m.; the parties present being Bruce Walkup, Attorney on behalf of the Plaintiff and Cross-Defendant, The Permanente Metals Corporation, a corporation; Mr. Elliott H. Pentz, Attorney on behalf of the Defendants and Cross-Complainants, John Urquhart Birnie, an individual doing business as Birnie Electric Company, and Massachusetts Bonding and Insurance Company; The Notary Public, John P. Labofish; the Reporter, Mrs. Chloe S. MacReynolds; and the witness, R. L. McDonald.) [32]

The Notary Public: The hearing is resumed this morning.

Mr. Pentz: Mr. Labofish, will you please remind the witness that he is still under oath?

The Notary Public: Yes. Mr. McDonald, you are reminded that you are still under oath.

The Witness: All right.



R. L. McDONALD

a witness produced on behalf of the Plaintiff and Cross-Defendant, The Permanente Metals Corporation, a corporation, having been previously sworn to state the truth, the whole truth, and nothing but the truth, testified further on his oath as follows:

Cross-Examination

By Mr. Pentz:

Q. Mr. McDonald, would you state how long previous to the present time you have been employed by the Maritime Commission?

A. I have been employed by the Maritime Commission ever since its inception in 1936, and prior to that by the old Shipping Board since 1919.

Q. Would you kindly state briefly the nature of your duties during the course of your employment by the United States Maritime Commission?

A. Well, for a number of years—with the Maritime Commission? [33]

Q. Yes, please.

A. I have been in the administrative end of the work as Assistant Secretary and Assistant Division Chief of Division of Administration.

Q. Over what period of time?

A. That is since the inception of the Maritime Commission.

Q. Until about what time did you hold that position? A. Which, administrative?

Q. Yes, the one you last referred to.

A. Oh, it was maybe two years.

(Deposition of R. L. McDonald.)

Q. That would bring it up roughly through 1938?

A. Yes, sir, we will say that; and since I have been Assistant Secretary of the Maritime Commission.

Q. And since 1938 you have been Assistant Secretary?

A. Yes. Those are approximate dates; I have forgotten the exact dates.

Q. Now, I wish to refer your attention to Plaintiff's Exhibit R. I will first ask you whether Plaintiff's Exhibit R, the original of that exhibit, is in your official possession and custody on behalf of the Commission?

A. To the best of my knowledge and belief, it is.

Q. I will direct your attention to that letter and ask if there is anything appearing thereon to indicate when the original letter was received by the United States [34] Maritime Commission?

A. Approximately March 1, 1944, as indicated by this stamp here, which is obliterated in part.

Q. Again, calling your attention to Plaintiff's Exhibit R, and more particularly to enclosure A, I take it that enclosure A was a part of the entire letter?

A. That is right.

Q. Directing your attention to enclosure A, and more particularly the dates appearing below the word "delivery," will you tell us, please, what significance, if you know, those dates imply?

A. I wouldn't know because I am only custodian

(Deposition of R. L. McDonald.)

of those records and I am not familiar with those at all.

Q. Am I to understand from your answer that you have no knowledge whatsoever of your own as to the meaning of the entries below the word "delivery"?

A. That is right, without examining the record, which I have not done, of course.

Q. Do you have in your possession records which would indicate the significance of those dates?

The Witness: What is that question again?

Mr. Pentz: Repeat the question, please.

(Pending question read.)

The Witness: By those dates do you refer to delivery dates? [35]

Mr. Pentz: That is exactly true.

Mr. Walkup: There are other dates on there, I believe.

Mr. Pentz: Not in that column.

Mr. Walkup: No; on that sheet.

Mr. Pentz: I will reframe the question if there is any misunderstanding.

Mr. Walkup: No, I think it is clear now.

Mr. Pentz: I believe I said, and if I didn't I will state that I have reference to the date in vertical column below the word "Delivery."

The Witness: I personally have no knowledge of what it means. Undoubtedly there is somebody in the organization who is thoroughly familiar with this and can amplify it to your satisfaction.

(Deposition of R. L. McDonald.)

Q. (By Mr. Pentz): Mr. McDonald, I understood you to state that you could not acquaint me with the significance of the dates referred to without reference to other records.

A. I didn't say other records; it may be——

Q. I will now ask you——

Mr. Walkup: Just a moment. The witness did not complete his answer.

Mr. Pentz: I have not completed my question.

Mr. Walkup: Could the record be read back and see if the witness was interrupted in the making of an answer? [36]

Mr. Pentz: I am the one that was propounding the question and I know whether I was finished.

Mr. Walkup: I would like to have the record read. I thought there was an interruption of the witness' answer. It may be the witness was interrupted and I would like to have the witness answer fully.

Mr. Pentz: I wish to make a statement. Have you finished, Mr. Walkup?

Mr. Walkup: Yes.

Mr. Pentz: I wish to state that I, being the person best informed as to what my question will be, will state for the record that I had no intention whatsoever of ending the question at the point where Mr. McDonald started to volunteer his answer.

Now, for the purpose of avoiding this needless confusion, I will ask the question once more.

Q. (By Mr. Pentz): Mr. McDonald, I refer

(Deposition of R. L. McDonald.)

your attention to Plaintiff's Exhibit R, more particularly to the paper thereto attached marked enclosure A, and will direct your attention to the vertical column of figures appearing below the word "Delivery."

Can you of your own knowledge acquaint me with the significance or meaning of the dates appearing in the said vertical column?

A. I cannot. [37]

Q. Do you have custody of any records which would assist you in acquainting me with the significance of those dates?

A. There probably are; undoubtedly there are records that show.

Mr. Pentz: Off the record.

(A discussion off the record was had.)

Q. (By Mr. Pentz): Mr. McDonald, do you have in your custody and control any documents or records pertaining to the dates of delivery by the United States Maritime Commission to the United States Navy of vessels identified by Maritime designation hull numbers MCV 552 through 573, inclusive?

A. If those vessels were delivered to the Navy there are undoubtedly records around here which would show the dates of delivery.

Q. I would like to have a direct answer to the question.

A. I can't tell you, of course, without going to the records and seeing, but I am quite sure that we do that because that is just a routine record.



(Deposition of R. L. McDonald.)

Q. Now, I ask you whether or not you are willing to permit the opportunity of viewing the records you refer to?

A. That undoubtedly can be arranged.

Mr. Pentz: Off the record.

(A discussion off the record was had.) [38]

Q. (By Mr. Pentz): Mr. McDonald, I refer your attention to Plaintiff's Exhibit I and particularly the language as follows:

"It is requested that the Maritime Commission construct 130 standard APA's."

Now, I will ask you when the vessels identified by Maritime Commission hull numbers 552 through 573, inclusive, were completed did those vessels constitute a portion of the 130 standard APA's referred to in the letter identified as Plaintiff's Exhibit I?

A. I wouldn't know without reference to records.

Mr. Pentz: Off the record.

(A discussion off the record was had.)

Q. (By Mr. Pentz): Mr. McDonald, are you willing to procure such records as you have in your custody bearing upon the last preceding question, to permit me to examine the same?

I have reference to such records as you deem necessary to place yourself in a position to furnish the information requested by the context of my preceding question.

Mr. Walkup: I will object to the form of the

(Deposition of R. L. McDonald.)

question as to whether or not the witness is willing to do it.

Mr. Pentz: I would like the witness, subject to your objection, Mr. Walkup, to answer the question.

Would you like to have it re-read? [39]

The Witness: Yes, please.

(Pending question read.)

The Witness: Off the record.

(A discussion off the record was had.)

Mr. Walkup: Perhaps you better read the question before that.

(Thereupon, the following was read:)

“Question: Mr. McDonald, I refer your attention to Plaintiff’s Exhibit I and particularly the language as follows:

“‘It is requested that the Maritime Commission construct 130 standard APA’s.’

“Now, I will ask you when the vessels identified by Maritime Commission hull numbers 552 through 573, inclusive, were completed did those vessels constitute a portion of the 130 standard APA’s referred to in the letter identified as Plaintiff’s Exhibit I?

“Answer: I wouldn’t know without reference to records.

“Question: Mr. McDonald, are you willing to procure such records as you have in your custody bearing upon the last preceding question, to permit me to examine the same?

(Deposition of R. L. McDonald.)

“I have reference to such records as you [40] deem necessary to place yourself in a position to furnish the information requested by the context of my preceding question.”

The Witness: I don't see how we can object to furnishing this information if we can dig it out of the records. We have to locate it first—in a published form.

Mr. Pentz: That can be deemed the answer to the question, so far as the answer goes.

Mr. Walkup: When you say “this information,” are you referring to the information mentioned in our off-the-record discussion?

The Witness: I am referring to his request that he be allowed to look at our records and ascertain whether these 130 actually were under this item we constructed.

Mr. Pentz: Off the record.

(A discussion off the record was had.)

The Notary Public: At 9:50 o'clock a.m., the hearing on the deposition was suspended until the witness announces he has located records with which to continue the hearing.

(Thereupon, at 9:50 o'clock a.m., the taking of the deposition was adjourned.) [41]

Friday, October 3, 1947

The Notary Public: Will the Reporter show the hearing was resumed at 9:10 o'clock a.m. and that the witness is reminded he is still under oath.

Thereupon,

R. L. McDONALD

witness produced on behalf of the Plaintiff and Cross-Defendant, The Permanente Metals Corporation, a corporation, having been previously sworn to state the truth, the whole truth, and nothing but the truth, testified further on his oath as follows:

Cross-Examination  
(Resumed)

By Mr. Pentz:

Q. Mr. McDonald, I would like to have you give us the dates on which delivery was made by the United States Maritime Commission to the United States Navy of each of the vessels identified by United States Maritime Commission Hull Numbers 552 through 573, inclusive, and I will ask you please when you give us each of those dates that you kindly refer to the ship by Maritime Commission hull number and its name.

Mr. Walkup: Off the record.

(A discussion off the record was had.)

A. Maritime Commission Hull No. 552, the "Sarasota," delivered to the Navy by the Maritime Commission on 8-16-44.

Maritime Commission Hull No. 553, the "Sherburne," [42] delivered to the Navy by the Maritime Commission on 9-18-44.

Maritime Commission Hull No. 554, the "Sibley," delivered to the Navy by the Maritime Commission on 9-30-44.

(Deposition of R. L. McDonald.)

Maritime Commission Hull No. 555, the "Mifflin," delivered to the Navy by the Maritime Commission on 10-10-44.

Maritime Commission Hull No. 556, the "Talladega," delivered to the Navy by the Maritime Commission on 10-31-44.

Maritime Commission Hull No. 557, the "Tazewell," delivered to the Navy by the Maritime Commission on 10-25-44.

Maritime Commission Hull No. 558, the "Telfair," delivered to the Navy by the Maritime Commission on 10-31-44.

Maritime Commission Hull No. 559, the "Missoula," delivered to the Navy by the Maritime Commission on 10-27-44.

Maritime Commission Hull No. 560, the "Montrose," delivered to the Navy by the Maritime Commission on 10-31-44.

Maritime Commission Hull No. 561, the "Mount-rail," delivered to the Navy by the Maritime Commission on 11-16-44.

Maritime Commission Hull No. 562, the "Natrona," delivered to the Navy by the Maritime Commission on 11-8-44.

Maritime Commission Hull No. 563, the "Navarro," delivered to the Navy by the Maritime Commission on 11-15-44.

Maritime Commission Hull No. 564, the "Neshoba," delivered to the Navy by the Maritime Commission on 11-16-44.

Maritime Commission Hull No. 565, the "New



(Deposition of R. L. McDonald.)

Kent," delivered to the Navy by the Maritime Commission on 11-18-44. [43]

Maritime Commission Hull No. 566, the "Noble," delivered to the Navy by the Maritime Commission on 11-25-44.

Maritime Commission Hull No. 567, the "Oka-loosa," delivered to the Navy by the Maritime Commission on 11-24-44.

Maritime Commission Hull No. 568, the "Okanogan," delivered to the Navy by the Maritime Commission on 12-2-44.

Maritime Commission Hull No. 569, the "Oneida," delivered to the Navy by the Maritime Commission on 12-5-44.

Maritime Commission Hull No. 570, the "Pick-away," delivered to the Navy by the Maritime Commission on 12-10-44.

Maritime Commission Hull No. 571, the "Pitt," delivered to the Navy by the Maritime Commission on 12-12-44.

Maritime Commission Hull No. 572, the "Randall," delivered to the Navy by the United States Maritime Commission on 12-18-44.

Maritime Commission Hull No. 573, the "Bingham," delivered to the Navy by the Maritime Commission on 12-24-44.

Mr. Pentz: May the record show that Mr. Walkup and I have agreed that there will be no objection based on the testimony of Mr. McDonald as not being the best evidence regarding the delivery dates in the answer to the preceding question;

(Deposition of R. L. McDonald.)

nor any objection to this testimony based on the failure to produce any or all of the official records upon which the testimony was based.

Mr. Walkup: That is correct, provided that the same [44] stipulation is entered into with reference to the other testimony of Mr. McDonald this morning with reference to the information of a similar character gained by him from reference to the Maritime Commission records; and also with the further understanding that certain pages from the Maritime Commission report of vessel construction identified as pages 2B, 4B, 5B, 21B, 22B, 26B, and 27B, together with an abstract of information gained from official records of the United States Maritime Commission, entitled, "Total Number of Design VC 2-S-AP5 constructed by the United States Maritime Commission may be introduced without objection on the grounds that they are not the best evidence and without objection that they are not certified as true and correct copies of original records on file with the Commission.

Mr. Pentz: That is agreed.

For the purpose of clarification, may the record indicate, insofar as Mr. Walkup's statement and insofar as my statement are concerned, that the agreements as outlined by each of us are equally applicable to not only the matters described by Mr. Walkup but to the testimony of Mr. McDonald adduced in the last answer.

Mr. Walkup: In other words, what we are trying to do is waiving objections to the form of presenta-

(Deposition of R. L. McDonald.)

tion of the evidence and to the proper authentication of the documentary evidence but reserving all other objections. [45]

Mr. Pentz: That is correct.

Mr. Walkup: On both sides.

Mr. Pentz: Right.

Q. (By Mr. Pentz): Mr. McDonald, I hand you a paper headed by the following words, "Total Number of Design VC 2-S-AP5 Constructed by the United States Maritime Commission," and I will ask you to tell us what this purports to be?

A. As designated by its title, it purports to be total number of design VC 2-S-AP5's constructed by the United States Maritime Commission, which information was compiled from official records of the Maritime Commission.

Q. Does this indicate the total number of VC 2-S-AP5's design vessels built by the United States Maritime Commission during World War II?

A. To the best of my knowledge, it does; at least as shown by our records.

Q. That is what it purports to show?

A. That is right.

Q. And so far as you know it is accurate?

A. That is right.

Q. In the first column, directing your attention to the words in vertical column "California S.B. Corp" stands for California Shipbuilding Corporation, does it not? A. That is right. [46]

Q. The "Oregon S. B. Corp" stands for Oregon Shipbuilding Corporation? A. That is right.

(Deposition of R. L. McDonald.)

Q. In the second vertical column starting with the designation MCo-15740, and the numbers below it, what do they indicate?

A. That is the contract number.

Q. And in the third vertical column starting with the letters "M. C. V.," et cetera, and the numbers in vertical column, they indicate what?

A. The hull numbers.

Q. And in the last vertical column starting with figures 30 and the figures underneath represent what?

A. The numbers of ships constructed.

Mr. Pentz: I ask that that paper be identified as Defendants' Exhibit 8.

(Document entitled, "Total Number of Design VC 2-S-AP5 Constructed by the United States Maritime Commission," was marked Defendants' Exhibit 8 for identification.)

Mr. Pentz: At this time I offer Defendants' Exhibit 8 into evidence.

(The document heretofore marked Defendants' Exhibit 8 for identification, was offered in evidence as Defendants' Exhibit 8.)

Mr. Pentz: I have no further questions. [47]

### Redirect Examination

By Mr. Walkup:

Q. Mr. McDonald, referring to Defendants' Exhibit 8, which was just introduced, I show you pages 2B, 4B, 5B, 21B, 22B, 26B and 27B of the

(Deposition of R. L. McDonald.)

completed vessels report of the Maritime Commission.

These sheets are the records, are they not, from which the total of 117 vessels appearing on Defendants' Exhibit 8 was compiled?

A. That is right.

Q. And just for the purpose of clarification, on page 2B all of the vessels shown are AP5's?

A. I would say so, yes.

Q. And on page 4B the AP5's start with the vessels listed below the red line?

A. That is right.

Q. And other vessels of this type appearing on that page are marked out in red?

A. That is right.

Q. On page 5B the same situation is true with reference to the marking out of vessels other than AP5's?

A. That is right.

Q. The same is true also on page 21B; is that right?

A. That is right.

Q. And the same is also true as to page [48] 22B?

A. That is right.

Q. And the same is true also as to page 26B with reference to the marking out?

A. That is right.

Q. The same statements also as to page 27B with reference to the marking out of all those other than the AP5's?

A. That is right.

Q. This particular series of pages show in each case the percentage of completion as 100 per cent?

A. Apparently it does.



(Deposition of R. L. McDonald.)

Q. Except as to page 21B, which at the top says "Completed Contracts." A. Yes.

Q. All of the other pages showing as to the AP5's 100 per cent completion?

A. That is right.

Q. It is true, is it not, that during the course of construction of vessels and during the progress of the war, reports of this general character were issued on a progress basis showing percentage of total completion as less than 100 per cent?

A. Yes. Those reports are issued monthly to show the progress; it is just a regular routine of the organization.

Q. So the fact that the operator on this report appears, as designated under the heading "Operator," in each case does [49] not necessarily mean that that was the name of the operator at the time the construction of the vessel was undertaken?

A. Oh, no.

Mr. Walkup: I offer these sheets numbered as described 2B, 4B, 5B, 21B, 22B, 26B and 27B in evidence as Plaintiff's Exhibits II to OO, inclusive.

(Page 2B of the Completed Vessels Report of the Maritime Commission, was marked for identification and offered in evidence as Plaintiff's Exhibit II.)

(Page 4B of the Completed Vessels Report of the Maritime Commission, was marked for identification and offered in evidence as Plaintiff's Exhibit JJ.)

(Deposition of R. L. McDonald.)

(Page 5B of the Completed Vessels Report of the Maritime Commission, was marked for identification and offered in evidence as Plaintiff's Exhibit KK.)

(Page 21B of the Completed Vessels Report of the Maritime Commission, was marked for identification and offered in evidence as Plaintiff's Exhibit LL.)

(Page 22B of the Completed Vessels Report of the Maritime Commission, was marked for identification and offered in evidence as Plaintiff's Exhibit MM.)

(Page 26B of the Completed Vessels Report of the Maritime Commission, was marked for identification and offered in evidence as Plaintiff's Exhibit NN.) [50]

(Page 27B of the Completed Vessels Report of the Maritime Commission, was marked for identification and offered in evidence as Plaintiff's Exhibit OO.)

Mr. Pentz: I am going to interrupt; Mr. McDonald spoke hastily in answering that last question, so hastily that I couldn't have possibly got in an objection to it.

I wish to have the record show that I desire to object to the question on this ground, namely, that the form of the question called for the conclusion of the witness, and on that ground I interpose an objection.

Mr. Walkup: Off the record.

(Deposition of R. L. McDonald.)

(A discussion off the record was had.)

Q. (By Mr. Walkup): Mr. McDonald, will you please state the meaning of the heading "Operator," on each of these sheets as it appears at the top of each column?

A. The word "Operator" is part of the standardized form used to compile this report and it does not necessarily mean that the United States Navy was the operator. It really means to whom these particular ships were delivered in each instance. In other words, this report was adopted to utilize this form.

Q. That refers, then, to the operator of a completed vessel after delivery?

A. That is right. [51]

Q. In response to request you have obtained from the official records of the Commission information with reference to Hulls 525 to 601 built by the United States Maritime Commission and to whom these hulls were delivered by the Commission. This information has now been compiled under your direction on a sheet of paper which I now hand you and ask you if the information appearing thereon is information compiled or excerpted from the official Maritime Commission records?

A. To the best of my knowledge and belief this information is correct as shown by this statement.

Q. This is information compiled from records at your request? A. That is right.

Q. I note from this sheet that there has been

(Deposition of R. L. McDonald.)

an omission of hulls 552 to 573. Those were the vessels which as shown by Defendants' Exhibit 8 were delivered by the Maritime Commission to the United States Navy?

A. I believe so. In other words, you are asking whether these others were built by other contractors?

Q. In the preparation of the list which I am now referring to hulls numbered 552 to 573 were omitted. A. That is right.

Q. That was for the reason that those vessels, as shown by Defendants' Exhibit 8, were delivered by the Maritime [52] Commission to the United States Navy? A. That is right.

Q. These hulls numbered 552 to 573?

A. That is right.

Mr. Walkup: Would you please mark this sheet concerning which the witness has just been testifying as Plaintiff's Exhibit FF?

(The document entitled "M.C.V. Hulls 525-601, Built by U. S. Maritime Commission and to Whom They Were Delivered," was marked Plaintiff's Exhibit FF, for identification.)

Mr. Walkup: I now offer this in evidence as Plaintiff's Exhibit FF.

(The document heretofore marked Plaintiff's Exhibit FF for identification was offered in evidence as Plaintiff's Exhibit FF.)

Q. (By Mr. Walkup): Mr. McDonald, these documents which have been produced here this

(Deposition of R. L. McDonald.)

morning do not necessarily lead you to the conclusion, do they, that all of the AP5 vessels constructed by the Commission were necessarily constructed pursuant to the document designated as Plaintiff's Exhibit I, which was exhibited to you at the conclusion of your testimony at the last session of this deposition?

Mr. Pentz: Object to the form of the question as calling for a conclusion of the witness.

Don't these records speak for themselves? [53]

Mr. Walkup: I want this understanding clear, as far as I am concerned:

Your last question or questions at the conclusion of the preceding session of Mr. McDonald's deposition asked him if he would produce records which established in effect that all of these vessels were constructed in accordance with the letter from The Joint Chiefs of Staff calling for 130 APA's.

Mr. Pentz: That is right.

Mr. Walkup: Certain records have been produced this morning. The records speak for themselves and I would not want any inference that these records were produced to establish that fact because the witness has not so testified.

Mr. Pentz: That doesn't require any answer from him. He has not been asked that.

Mr. Walkup: Just so there won't be any misleading inference, that was my point; in view of the statements which have been made I will not press the question.



(Deposition of R. L. McDonald.)

Mr. Pentz: We cannot argue the effect of these records.

Mr. Walkup: That is right; I was not intending to at this point.

I have no further questions.

Mr. Pentz: None.

Mr. Walkup: Will the Notary Public please adjourn this proceeding then until 11 o'clock this morning when we [54] will continue with the testimony of Mr. Maher, in accordance with the previous order of the Notary Public?

The Notary Public: That is right. This proceeding is adjourned until 11 o'clock a.m., at which time the deposition of Mr. Maher will be continued.

Mr. Walkup: I would like to state at this time that it is my intention to request the Notary Public to continue with these proceedings during all regular court hours today and also if necessary commencing tomorrow morning, and to continue tomorrow morning in accordance with the notice of the depositions which stated that the depositions would be continued from day to day until completed.

Mr. Pentz: Very well; that is agreeable to me.

(Thereupon, at 9:40 o'clock a.m., the further taking of the deposition was continued to 11 o'clock a.m., October 3, 1947.)

/s/ R. L. McDONALD,

/s/ RONALD L. McDONALD.

District of Columbia,  
City of Washington—ss.

I, John P. Labofish, a Notary Public within and for the District of Columbia, do hereby certify:

That prior to being examined the witness whose signature is affixed to the foregoing deposition was sworn by me to testify the truth, the whole truth and nothing but the truth; [55]

That said deposition was taken down by Chloe S. MacReynolds, an official court reporter of the District Court of the United States for the District of Columbia, in shorthand, at the time and place therein stated and was thereafter reduced to typewriting under her direction;

That Chloe S. MacReynolds, the Reporter, is a disinterested party to the cause;

That when reduced to typewriting the deposition was read by or to the said witness, who was duly informed by me of the right to make such corrections as might be necessary to render the same true and correct, and the same was thereupon signed by the said witness in my presence.

I further certify that I am not of counsel or attorney for either of the parties hereto or in any way interested in the event of this cause, and that I am not related to either of the parties thereto.

Witness my hand and seal this 30th day of October, 1947.

[Seal]      /s/ JOHN P. LABOFISH,

Notary Public Within and for  
the District of Columbia.

My commission expires: Dec. 14, 1947. [56]

[Title of District Court and Cause.]

DEPOSITION OF JOHN BASSETTE MAHER

Appearances:

BRUCE WALKUP,

On Behalf of Bruce Walkup; Willis S. Slusser; Thelen, Marrin, Johnson & Bridges, Attorneys for Plaintiff and Cross-Defendant, The Permanente Metals Corporation, a Corporation. [57]

ELLIOTT H. PENTZ,

On Behalf of Hill, Morgan & Farrer; Tinning & DeLap; Mellin and Hanscom, Attorneys for Defendants and Cross-Complainants, John Urquhart Birnie, an Individual Doing Business as Birnie Electric Company, and Massachusetts Bonding and Insurance Company, a Corporation.

Deposition of John Bassette Maher, taken on behalf of the plaintiff and cross-defendant, The Permanente Metals Corporation, a corporation, in Room 4705, Department of Commerce, in Washington, D. C., at 2:30 o'clock p.m., on the 1st day of October, 1947, before John P. Labofish, a Notary Public within and for the District of Columbia, pursuant to the annexed stipulation.

JOHN BASSETTE MAHER

a witness produced on behalf of the plaintiff and cross-defendant, The Permanente Metals Corpora-

(Deposition of John Bassette Maher.)

tion, a corporation, being first duly sworn to state the truth, the whole truth, and nothing but the truth, testified on his oath as follows:

### Direct Examination

By Mr. Walkup:

Q. Please state your full name.

A. John Bassette Maher.

Q. Where do you reside, Mr. Maher?

A. 313 Fourth Street, Northeast, Washington, D. C. [58]

Q. By whom are you employed?

A. The United States Maritime Commission under Civil Service appointment.

Q. Have you been designated by the Chairman of the Maritime Commission to give certain testimony in this proceeding, as one of the witnesses designated by the Chairman of the Maritime Commission to testify on his behalf? A. I have.

Q. What is your present position with the United States Maritime Commission?

A. I am presently the Acting Chief of the Materials Adjustment and Claims Unit of the Accounting Division, Bureau of Accounts, United States Maritime Commission.

Q. How long have you held that position?

A. Since July 1, 1947.

Q. Prior to that time, what was your position with the Commission?

A. I was head of the Accounts Analysis and

(Deposition of John Bassette Maher.)

Adjustment Unit of the Analysis and Statement Branch, Division of Finance, U. S. Maritime Commission.

Q. And how long have you held that position?

A. From February, 1943, until June 30, 1947.

Q. During all that time were you the head of the division?

A. From February, 1943, until April 4, 1944, I was [59] a Sub-Group Head in the same unit. In April, 1944, I was made Chief of the Unit.

Q. Will you state briefly the functions of the position of Head of the Accounts Analysis and Adjustment Unit, the position which you have testified you held prior to July 1, 1947?

A. As head of the unit, it was my responsibility to supervise, and direct an organization engaged in the analysis of accounts for the purpose of determining that costs previously recorded on the books were properly allocated as between contracts, types of vessels, ship construction (as opposed to facilities construction), and to maintain a reconciliation between the formal books of account and the records of the Construction Audit Section, another unit organization of the Commission; and to maintain a reconciliation between the Commission's books and those of the prime contractor, or the shipbuilder.

Q. By "prime contractors" or "shipbuilders," what do you mean?

A. The contractor who is employed by the Com-



(Deposition of John Bassette Maher.)

mission, such as the party to this action, The Permanente Metals Corporation.

Q. Did your duties of that position pertain to the recovery of any funds by the Maritime Commission from other sources?

A. In our analysis it was also our responsibility to determine that the costs so allocated were actually costs to be [60] absorbed by the Commission, and if we determined that they were not, but were expenses incurred by the Commission for the account of some other individual, or government agency, or private enterprise, to so separate those costs.

Q. Did you have other functions in that position?

A. Well, in the position also came the control of funds allocated by other agencies and other sources for which the Commission had a liability, an accounting liability, to determine those funds were properly accounted for, and to either bill the creditor or the debtor for any moneys due us or in the case of a creditor to refund any moneys that may be due them.

Q. Did your duties have anything to do with or pertain to the charges for particular vessels or a series of vessels built by a builder such as The Permanente Metals Corporation?

A. Oh, yes. The duties also involved the separation of costs to determine that costs for materials and supplies or other services, which went aboard or in the construction of a given vessel, or group

(Deposition of John Bassette Maher.)

of vessels, were properly established on the books with respect to that vessel or group of vessels.

Q. In that particular function did you have any responsibility for seeing that the charges for particular vessels were properly charged to particular prime contracts between the Maritime Commission and the various shipbuilders employed by it?

A. In the distribution of costs that was the main element, [61] to determine that they were actually charged to the prime contractor and contract.

Q. Did your duties of that position also include responsibility for seeing that payments made by the Commission for vessels constructed were paid from the proper funds available to the Commission for such construction?

A. Yes, sir.

Q. Will you explain in what manner your duties pertained to that subject?

A. The Maritime Commission was granted its first appropriation under the Merchant Marine Act of 1936. That Act has been supplemented and augmented from time to time and also other funds have been established and made available for the Commission from other sources. Each of those appropriations and/or allocations from the various sources was provided for a specific purpose.

Q. Referring first to the question of appropriations, what do you mean by "appropriations"?

A. Money authorized through enabling legislation to be made available to the federal agency or

(Deposition of John Bassette Maher.)

establishment for its sole use and for the specific purposes as outlined in the legislation.

Q. Are you referring to appropriations by Act of Congress?

A. Appropriations by Act of Congress of the United [62] States.

Q. Does the United States Maritime Commission have any funds established pursuant to appropriations of Congress?

A. The Maritime Commission began operating with a fund provided under the Merchant Marine Act of 1936. That fund was entitled "Construction Fund, United States Maritime Commission, Act June 29, 1936, Revolving Fund."

Q. Is that the only fund appropriated by Congress for the use of the United States Maritime Commission?

A. No, sir.

Q. Are there other funds which the Commission has available by appropriation of Congress, and with which you are familiar in your official capacity?

A. There are other funds. I would have to refer to records to describe those funds, because I was concerned primarily with the constructions features of the work.

The other funds were for features and for operations and activities apart from construction. I can't give a description of those funds today.

Q. Did the duties of your position that you held up to July 1, 1947, entail any responsibility as to seeing that the funds available to the Maritime

(Deposition of John Bassette Maher.)

Commission were used for the purpose set forth in the appropriation?

A. That, again, was one of our major functions.

Q. Did you perform that function in the position that [63] you held up until July 1, 1947?

A. I did, sir.

Q. You mentioned also in your testimony a moment ago allocations of funds to the Commission. Will you please explain in further detail the meaning of that term as you used it?

A. I can do that by example. At the inception of the Foreign Economic Administration, as the Lend-Lease activity the Maritime Commission, as the ship constructing agency of the Government, entered into agreements with the Foreign Economic Administration under which they would undertake the construction of ships to be financed through funds appropriated to the Foreign Economic Administration.

On the basis of estimates of costs, the Foreign Economic Administration made certain further allocations and placed the moneys covered by these allocations at the disposal of the Maritime Commission for us in defraying the costs of the construction.

Q. Was there more than one such allocation of funds to the Maritime Commission during your occupancy of the position you occupied up until July 1, 1947?

A. There were others. The only one that I am



(Deposition of John Bassette Maher.)

qualified to speak on at this moment is the President's Emergency Fund from which certain allocations were made for certain purposes.

Q. Were other funds from other sources made available to [64] the Maritime Commission, from other sources?      A. Yes, there were.

Q. What designations were given to such funds, in your office?

A. Generally speaking they were entitled, "United States Maritime Commission Working Fund."

Q. Could you give an example of what you mean by a fund designated as "United States Maritime Commission Working Fund"?

A. Frequently, throughout the course of the war, the military establishments, such as the War, Navy, and in one or two instances I believe the Coast Guard, requested the Maritime Commission to divert certain vessels under construction, originally designed for the use of the Maritime Commission, to that agency upon completion.

After the arrangements had been completed under which the transfer, usually on a loan or loan-charter basis, was made, the Budget Officer of the Maritime Commission requested the Technical Division of the Maritime Commission to estimate the costs of the construction of the vessel or group of vessels which in themselves were only a part of a going contract.

On the basis of this estimate, the Budget Officer



(Deposition of John Bassette Maher.)

then requisitioned funds from the agency to be placed at the disposal of the Commission for the purposes of financing the costs of the construction of the vessel to be so diverted.

Q. Funds placed under such an arrangement then would [65] constitute working funds, United States Maritime Commission, as designated in your office?

A. That is right, except that title is reversed, "United States Maritime Commission Working Fund."

Q. Will you state, please, what method was employed by your office, and, when I say "your office" I refer to your office as Head of Accounts, Analysis and Adjustment Unit which you held prior to July 1, 1947, for keeping various charges for particular vessels constructed for the Commission separate from charges for other vessels constructed for the Commission?

Mr. Pentz: May I have the question read?

(Thereupon, the question was read by the reporter, as follows:)

"Question: Will you state, please, what method was employed by your office, and, when I say 'your office' I refer to your office as Head of Accounts, Analysis and Adjustment Unit which you held prior to July 1, 1947, for keeping various charges for particular vessels constructed for the Commission separate from charges for other vessels constructed for the Commission."

(Deposition of John Bassette Maher.)

Q. (By Mr. Walkup, continuing): —and also for keeping costs chargeable to particular funds separate from funds chargeable to other funds available to the Commission?

The Witness: Off the record. [66]

(Discussion off the record.)

Mr. Walkup: I will withdraw the question and reframe the question.

Q. (By Mr. Walkup): Will you state, please, what method was used in your office, as Head of the Accounts, Analysis and Adjustment Unit, to keep charges for vessels construction work done under a particular fund available for vessels construction, separate from charges against other funds available for vessels construction work?

A. There were two methods.

Q. Will you state what they were, please?

A. The first method involved definite moneys made available to the Commission, which were expended directly from that fund for construction work. I refer specifically to the construction fund which we have already identified; the Lease-Lend allocations, and a third known as the Emergency Ship Program, which was a program carried on from a Congressional appropriation to the Maritime Commission.

In accounting for those three separate funds, we had three separate and distinct sets of books.

Where the distinction is between the construction funds, from any of the three funds just mentioned.

(Deposition of John Bassette Maher.)

and a working fund, the accounting procedure is considerably different.

Q. Did you use a system of symbols in keeping funds [67] properly chargeable to the particular fund or allocation from which they were taken for ship construction?

A. Each fund was identified by a numeric, and in some instances an alphabetic, symbol.

Q. Can you explain in more detail the method in which the symbol system was used?

A. When funds are made available, either through Congressional enabling legislation for the use of the Commission for any purpose whatever, or through allocations by another government agency, or through the establishment of working funds by another government agency, the purposes and intents of those funds must be first interpreted by the Comptroller General of the United States who defines the purposes and sets up the uses of the funds involved and assigns to that fund a symbol which is from then on used in identifying or referring to the fund in question, with its description.

Q. Could you give an example of a symbol number and tie it in to the particular fund which it signifies?

A. In my previous remarks referring to the establishment of the Maritime Commission's construction fund I referred to the Construction funds, United States Maritime Commission Act, June 29, 1936, Revolving Fund. This is symbolized as 39X0200.

Q. What is the meaning of that symbol, if you

(Deposition of John Bassette Maher.)

know?

A. The first two digits to the left, "69," are indicative [68] of the agency, in this instance Maritime Commission.

The "X" denotes that it is a revolving fund. It is a no-year limitation. Balances can be carried forward into the next fiscal year without Congressional approval or Comptroller General approval.

The final four digits, "0200," are simply a serial number and have no significance.

Q. When you say "no significance," I take it they do have the significance of referring to the particular fund established by the serial number?

A. I mean that the "0200" has no significance with respect to Maritime Commission. It does have a significance, but by itself "0200" would be indicative of nothing, is what I am trying to bring out; but with the combination it definitely ties up with the construction fund.

Q. Is that symbol published annually by the Treasury Department, if you know?

A. That symbol is contained in Treasury Department publications, and appears at intervals in which the particular publication is published; I don't know the intervals.

Q. Was the symbol 69X0200 in use by the Maritime Commission during the period from February, 1943, to and including July 1, 1947?

A. Not to and including, no, sir. It was in effect from the time I took office to and including June 30, 1947. [69]



(Deposition of John Bassette Maher.)

Q. That would be from February, 1943, to and including June 30, 1947? A. Yes, sir.

Q. Will you state, please, how that symbol was used in the mechanical keeping of records of the Commission during that period?

A. As vouchers, public vouchers, were passed for payment by the Audit Division, a bookkeeping copy of that voucher, so designated by stamp, was symbolized as to the appropriation, allotment, allocation, or working fund from which the disbursement was to be made.

Q. In other words, the symbol actually appeared on the public voucher showing the particular fund to which the voucher applied?

A. That is right, sir.

Q. Did the symbol number appear elsewhere in the accounting records of the Commission?

A. The symbol number appeared in our annual statements, our financial statements, and in our books of account as identifying symbols, yes, sir.

Q. Would that symbol also appear on statements issued relating to the particular fund designated by the symbol?

A. Any time a statement was prepared to show the status of a given contract or activity that involved disbursements from funds, the symbol identified with that fund was shown on [70] the statements.

Q. What would be the use of the symbol in a typical case starting with its appearance on a



(Deposition of John Bassette Maher.)

voucher and then following through the various accounting records in your department?

A. When the bookkeeping copy is received in the Accounting Division, it flows to what is known as the Coding Unit. In the Coding Unit, the expense is classified and is coded to the definitive classification on the books to aid in the machine posting of the item to the proper account.

Q. Is that coded to each separate contract actually according to symbol number?

A. It is coded first to appropriation, or to program, as represented by the appropriation; then to the contractor; within the contractor, the contract.

Q. When you refer to contractor are you referring to a builder such as The Permanente Metals Corporation?      A. I am.

Q. And when you refer to a contract are you referring to a contract such as the contract between the Maritime Commission and such a builder as Permanente?      A. I am, sir.

Q. After the coding of the symbol, what, if any, function does the Analysis Unit perform with reference to the coding?

A. The original classification is made in the Coding [71] Unit for the primary purpose of recording the item on the Commission's books.

It then became the function of the Analysis Unit to review through an internal audit process all of the pre-classified items to determine that the classification accorded to them by the coding unit was the proper classification.

(Deposition of John Bassette Maher.)

Q. In other words, would it be correct to say that the Analysis Unit checked the records after they had been coded to determine that the symbols had been accurately applied with reference to the particular fund for which the appropriations were available?

A. Substitute the word "analyzed" in there and the answer is yes.

Q. In other words, the answer is correct, assuming that the question used the word "analyzed" instead of "checked"? A. That is right.

Q. Will you please explain what you mean by a public voucher?

A. There are several forms of public vouchers. They are all designated by a form number. Each for its purpose is an instrument prescribed and approved by the Comptroller General of the United States as a medium of authorizing the disbursement of funds by the Treasurer of the United States, or for the collection of funds when the situation is one between two government agencies. [72]

Q. Would the symbol number 69X0200 appear upon such public vouchers, where the public vouchers related to funds in the Construction Fund, Merchant Marine Act, 1936, Revolving Fund of the Maritime Commission? A. Yes, sir.

Mr. Pentz: May I have the question read?

(Thereupon, the following question was read by the reporter:)

"Question: Would the symbol 69X0200 ap-

(Deposition of John Bassette Maher.)

pear upon such public vouchers, where the public vouchers related to funds in the Construction Fund, Merchant Marine Act, 1936, Revolving Fund of the Maritime Commission?"

Q. (By Mr. Walkup): Referring to your previous testimony that there are various funds available to the Commission, against which charges can be made for particular vessels construction, how do you determine which fund is to be charged for particular construction?

A. By reference to the Public Law under which those funds were made available.

Q. How do you determine the Public Law under which a particular contract between the Maritime Commission and its contractor, or builder, such as Permanente, is let?

A. The Public Law under which is let a specific contract is set forth in the contract itself. [73]

Q. Is that the method followed——

A. (Interposing): By reference to the contract we determine the Public Law——

Q. Just a moment. You interrupted my question. A. Oh, I am sorry.

Q. Is that the method followed in your office, as Head of Accounts Analysis and Adjustment Unit in determining the Public Law under which a particular construction program is initiated?

A. Yes.

Q. Having determined the Public Law under which such a contract is let, how do you then deter-

(Deposition of John Bassette Maher.)

mine the appropriation available for the particular construction work under that Public Law?

A. By reference to the Public Law itself and the purposes for which it was established.

Q. I want to refer you to Maritime Commission contract designated as MCo-15762 between the Maritime Commission and the Permanente Metals Corporation. Are you generally familiar with that contract? And with the addenda thereto?

A. I am generally familiar with it, yes.

Q. Did your duties from the date of the execution of that contract in April, 1943, to July 1, 1947, include the analysis of the vessel construction costs under said contract and addenda? [74]

A. Yes.

Q. By referring to Contract MCo-15762 can you illustrate the method used by your division in determining the appropriation of funds to be charged with the costs of the construction of ships provided for under that contract, to illustrate your previous testimony? A. Yes, I can.

Q. Will you do so, please?

A. Do you want me to do so from memory or shall I refer to the contract? I can do so from memory, but I can illustrate from the contract.

Mr. Walkup: I have a photostatic copy of the contract here, Mr. Pentz. I believe you have already had access to that.

Mr. Pentz: That is true.

Mr. Walkup: And without using it as an exhibit to this deposition, and having the trouble of



(Deposition of John Bassette Maher.)

having it reproduced again, would it be agreeable that the witness refers to it without making it a part of the deposition?

Mr. Pentz: Yes, sir, that is agreeable.

Mr. Walkup: All right; thank you.

The Witness: In reading from the contract MCc15762, paragraph 1, under "Whereas," line 1 states:

"Under the provisions of Public Law 247 and 630 (77th Congress) the Commission is authorized to construct in [75] the United States Merchant vessels of such size, type and speed as it may determine to be useful," et cetera.

That, of course, becomes the basis for the determination as to what funds shall be used in financing the cost of the vessels authorized and provided for under the contract.

Reference to the Public Law recited in the contract determines the purposes for which the moneys made available by that law are to be used.

Q. (By Mr. Walkup): In what manner did you, in your office, connect the particular funds made available under the Public Laws referred to in the contract to the particular construction fund available in the Commission for the construction?

A. Reference to the language of Public Law 247 will disclose that it is referred to as a supplemental appropriation to the appropriation made available through the medium of the Merchant Marine Act of 1936 and supplemental appropriations.



(Deposition of John Bassette Maher.)

Q. Is the same true with reference to Public Law 630 (77th Congress)?

A. Public 630 (77th Congress) refers to Public Law 247 and to the Merchant Marine Act of 1936, as well as to the Independent Offices Appropriation Act, which we haven't heretofore mentioned, but which is a supplemental vehicle to the original Act.

Q. To summarize your testimony then, is it correct that in determining the particular funds to be used for vessels [76] construction work you first refer to the particular contract and to the recitation therein of the Public Law or Laws under which the contract is let, and from that turn to the Public Law or Laws specified in the contract, and through analysis of the Public Law or Laws then determine the particular fund into which the funds made available by the Public Law or Laws, is placed?

The Witness: Will you read the question, please?

(Thereupon, the following question was read by the reporter:)

“Question: To summarize your testimony then, is it correct that in determining the particular funds to be used for vessels construction work you first refer to the particular contract and to the recitation therein of the Public Law or Laws under which the contract is let, and from that turn to the Public Law or Laws specified in the contract, and through analysis of the Public Law or Laws then determine the particular fund into which the funds made

(Deposition of John Bassette Maher.)

available by the Public Law or Laws, is placed?"

A. That is the procedure.

Q. (By Mr. Walkup): Is that the procedure that was followed in your office with reference to contract MCc 15762?

A. That is the procedure that was followed in reference to that contract. [77]

Q. Having made such determination, how did you then in turn connect the particular funds with the particular symbol number for the funds?

A. By reference to the Accounts and Procedures Letter issued by the Comptroller General of the United States establishing the symbol for that fund.

Q. I refer you now to contract designated as MCc36452 between United States Maritime Commission and the Permanente Metals Corporation, and ask you if you are generally familiar with that contract and the addenda thereto?

A. I am generally familiar with that contract.

Q. Did your duties from the date of the execution of that contract on April 1, 1945, to July 1, 1947, include the analysis of vessels construction costs under said contract as amended?

A. They did.

Q. By reference to Contract MCc36452 will you illustrate the method used by your division in determining the appropriation of funds to be charged with the costs of the construction of the ships provided for under that contract? A. I can.

Q. Will you do so, and for your convenience in

(Deposition of John Bassette Maher.)

doing so I will hand you a photostatic copy of the contract MCc36452.

Mr. Walkup: Mr. Pentz, will it also be agreeable that we don't have to attach this copy of the contract as an exhibit to [78] this deposition?

Mr. Pentz: That is agreeable.

The Witness: By reference to Contract MCc-36452, paragraph 1, under "Whereas" reads:

"Under the provision of Public Law 247 (77th Congress) the Commission is authorized to construct in the United States merchant vessels of such type, size and speed as it may determine to be useful," et cetera.

By reference to the Public Law cited it was determined that the construction authorized and provided for under the contract was to be financed from the construction fund of the United States Maritime Commission.

Q. (By Mr. Walkup): Was that determination made in the same manner as the determination was made under Contract MCc15762?

A. In the identical manner.

Q. As you have previously testified?

A. And as I have previously testified, yes.

Q. Do you know of your own knowledge to what appropriation of Congress the costs of construction of the vessels constructed under Contract MCc15762 were charged by the United States Maritime Commission on its books?

A. I do.

Q. To what appropriation were the costs of construction charged? [79]

(Deposition of John Bassette Maher.)

A. To the Construction Fund, United States Maritime Commission, Act of June 29, 1936, Revolving Fund, symbolized as 69X0200.

Q. Do you know of your own knowledge as to what appropriation of Congress the costs of construction of the vessels constructed under Contract MCc36452 were charged by the United States Maritime Commission? A. The same.

Q. Will you state, please, to what appropriation that was?

A. Construction Fund, United States Maritime Commission, Act of June 29, 1936, Revolving Fund, symbolized as 69X0200.

Q. Were all of the vessels constructed under Contract MCc15762, that is, Maritime Commission hull numbers from 525 to 601, inclusive, completed and paid for under that contract? A. No, sir.

Q. To what extent were they not completed and paid for under that contract?

A. Under the provisions of Addendum No. 3 to Contract MCc15762 the contract was modified to include only the construction of those hulls which were completed at the time of the execution of the addendum; that is, Hulls MC536 to 545——

Q. Inclusive?

A. Inclusive; and Hulls 552 to 573, inclusive, in all 32 vessels. [80]

Q. What procedure was followed by the Maritime Commission as to the allocation of costs for the 32 vessels which were completed under Contract MCc15762?



(Deposition of John Bassette Maher.)

A. As the costs were paid to the contractor based on completed work, these costs were accumulated on the Commission's books of account as direct costs of construction to the Commission.

Q. What accounting procedure was followed by the Commission to your knowledge at the time that Addendum 3 to Contract MCc15762 became effective?

A. To begin with, Addendum 3 to Contract MCc15762, in addition to establishing the total contract price for the 32 vessels, also stipulated that all costs recorded against the contract MCc15762 in excess of the total contract price for the 32 vessels, which was established at \$89,500,000, were to be transferred and absorbed by Contract MCc36452, and were to be considered as the costs recorded to date against the remaining 45 vessels originally contracted for under Contract MCc15762.

Those adjustments were made on the Commission's books of account as a result of which those accounts now reflect the total adjusted costs of both contracts, 15762 at \$89,500,000; 36452 I will have to refer to my records to give you the exact figure; it was substantially \$56,000,000 which was transferred from the first contract, MCc15762 to the new contract, MCc36452.

Q. By way of summary, would it be correct to say, then, [81] that before Addendum 3 to MCc15762 became effective, the costs which had been accumulated under Contract MCc15762 amounted to ap-



(Deposition of John Bassette Maher.)

proximately \$89,500,000 plus approximately \$56,000,000 in addition thereto?

A. That is roughly correct.

Q. And that the Commission then charged on its books as the cost to the Commission of Contract MCc15762 for the 32 vessels completed thereunder, the sum of \$89,500,000 and transferred the remaining \$56,000,000 approximately, to the new vessels contract No. MCc36452? A. That is correct.

Q. What did the figure of approximately \$56,000,000, which was transferred to Contract MCc36452 represent?

A. It represented the difference between the recorded costs to date against the entire 77 vessels originally provided for under Contract 15762, and the \$89,500,000 which was determined by Commission action in Addendum No. 3 to be the total contract price for the 32 vessels completed as at the date of the execution of Addendum No. 3.

Q. Would it be correct to say, then, that the approximately \$56,000,000 which was carried over to Contract MCc36452, as you have testified, represented costs chargeable against the remaining 45 vessels which were originally under MCc15762; that is, Hulls 525 to 535 inclusive; 546 to 551, inclusive; and, 574 to 601, inclusive? [82]

A. That is in accordance with the terms of Addendum No. 3 of the contract.

Q. And from an accounting standpoint that is the way the transaction was handled on the Commission's books, to your knowledge, is it not?

(Deposition of John Bassette Maher.)

A. That is correct.

Q. Were all of the vessels designated by Commission Hull numbers as 525 to 601, inclusive, completed under either MCc15762 or MCc36452?

A. All of the vessels within the sequence named were completed under the two contracts.

Q. Were all of the payments made by the Maritime Commission to the builder, The Permanente Metals Corporation, for the vessels designated as Maritime Commission hulls Nos. 525 to 601, inclusive, charged by the Maritime Commission to the Construction Revolving Fund established under the Merchant Marine Act of 1936?

Mr. Pentz: I would like to ask the witness a question on voir dire.

Mr. Walkup: All right.

Mr. Pentz: You have understood that question, haven't you, sir?

The Witness: Yes, sir.

Mr. Pentz: Is it not a fact that the information necessary for you to answer that question is contained in books and [83] records in your department?

The Witness: That is true.

Mr. Pentz: And those books and records are under your control and custody?

The Witness: During the time under discussion, they were.

Mr. Pentz: I object to the form of the question under the circumstances as calling for secondary evidence. Off the record.

(Deposition of John Bassette Maher.)

(Discussion off the record.)

Mr. Pentz: I will withdraw the objection.

The Witness: The answer is no. For the purposes of the record, I would like to say that when I say an item of cost was charged to an appropriation, that is to be taken to mean that it was paid from that appropriation. In the terminology used in the accounting organizations the cost was charged to a specific account on our books. The money that you have reference to, or the payments that you refer to, were all paid from the Construction Fund, United States Maritime Commission, Act of June 29, 1936, Revolving Fund, symbolized as 69X0200.

Q. (By Mr. Walkup): Was there any change made in the fund charged by the Maritime Commission when making such payments to Permanente after Addendum No. 1 to Contract MCCc15762 was adopted?

Mr. Pentz: Off the record.

(Discussion off the record was had.) [84]

The Witness: The answer is no.

Q. (By Mr. Walkup): Was there any change made in the fund charged by the Maritime Commission for payments made to Permanente after Addendum No. 2 to Contract MCCc15762 was adopted? A. No, sir.

Q. Was any change made in the fund charged by the Maritime Commission for payments to Permanente after Addendum No. 3 to Contract 15762 was adopted? A. No, sir.

(Deposition of John Bassette Maher.)

Q. Was any change made in the fund charged by the Maritime Commission for payments to Permanente after Addendum No. 1 to Contract MCc36452 was adopted? A. No, sir.

Q. To what extent, if any, did the United States Maritime Commission recover any part of the cost of the construction of vessels designated as Maritime Commission Hulls Nos. 525 to 601, inclusive, from any other source?

A. To refer to my previous testimony, at the time the Navy asked that the vessels 536 to 545, inclusive, and 552 to 573, inclusive, be diverted to them upon completion on a loan basis, the Technical Division was requested to prepare cost estimates for that group of vessels, which included the change in design or conversion costs provided for under Addendum No. 2 to Contract 15762. [85]

On the basis of those estimates, the Navy was requested and did make available to the Maritime Commission a sum of money which was arrived at by multiplying the vessel conversion costs total by 22.

These funds were then established under the Commission's control and were set up in a reserve account.

Q. Mr. Maher, you mentioned two series of vessels in the case of which the Maritime Commission recovered part of the costs of construction of the vessels from another source.

Let's take first the case of the ten hulls designated as Maritime Commission Hulls Nos. 536 to 545, inclusive: To what extent, if any, did the Maritime



(Deposition of John Bassette Maher.)

Commission recover any part of the cost of the construction of those vessels numbered 536 to 545 from any other source?

A. The Maritime Commission did not receive in reimbursement any part of the construction costs of vessels hulls MC536 to 545, inclusive.

The Maritime Commission did receive from the Navy Department reimbursement for the cost of delivery only of those ten vessels.

The vessels were completed in accordance with the original design, and there was no conversion to military type involved.

Q. Then, as to the ten Maritime Commission hulls, numbered 536 to 545, the only funds which were paid to the Maritime Commission by the Navy were the costs of delivery of those vessels to the [86] Navy?      A. That is correct.

Q. How was that reimbursement actually accomplished?

A. The delivery costs, which involved the use of tugs, was provided by the Resident Auditor in the shipyard and furnished to the Assistant General Auditor of Construction, who in turn forwarded it to the Accounts Division with a request that the Navy be billed for the specific amount. This was done and the billing was honored and the Revolving Fund was reimbursed.

Q. I hand you a document bearing date of March 6, 1945, and ask you please to identify that document.

A. That is a memorandum to the Assistant General Auditor of Construction from the Resident



(Deposition of John Bassette Maher.)

Auditor at Permanente Metals Yard No. 2, Richmond, California, which details the cost of delivery tug boat service expressed in hours and rate per hour for Maritime Commission Hulls 536 through 545, inclusive.

Q. What was the total amount of the charges for the delivery?      A. \$1,529.50.

Q. Is that document a true copy of the copy appearing in the accounting records of the Commission relating to that transaction?      A. It is.

Q. And is that a record maintained in the accounting procedure followed by the Commission in its performance of its [87] functions with relation to vessels Contract MCc15762?

A. It is in the sense that it becomes the support for the claim against the Navy and is retained with the supporting document in the accounting files.

Q. Was that document received in the office of the Resident Auditor in the usual course of Commission business?

A. It was developed in the office of the Resident Auditor and received in the office of the General Auditor of Construction during the routine course of business.

Mr. Walkup: May I have that marked for identification as Plaintiff's Exhibit V to the deposition of Mr. Maher?

(Certified photostatic copy of letter dated March 6, 1945, from C. L. Shaff to Frank L. Lynch (General Auditor) marked Plaintiff's Exhibit V for Identification.)

(Deposition of John Bassette Maher.)

Mr. Walkup: I offer this in evidence as Plaintiff's Exhibit V.

(The letter heretofore marked Plaintiff's Exhibit V for Identification was offered in evidence as Plaintiff's Exhibit V.)

Q. (By Mr. Walkup): Mr. Maher, I now show you a document bearing date of March 12, 1945, and ask you please to identify that document.

A. That is an office memorandum of transmittal to the General Auditor, to the attention of the Head of our Accounts Receivable Branch, and from the Assistant General Auditor of [88] Construction, which request that the General Auditor bill the Navy Department for the delivery charges of the ten vessels MC Hulls Numbered 536 to MC545, inclusive.

Q. Is that also a document the original of which is on file in the accounting records of the Commission?

A. That is correct.

Q. Is it an official record of the Accounting Division of the Commission?

A. It is.

Q. Is it a document sent and received in the usual course of official business of the Maritime Commission?

A. It is.

Mr. Walkup: Would you please mark this for identification as Plaintiff's Exhibit W.

(Certified photostatic copy of letter dated March 12, 1945, from Assistant General Auditor of Construction to General Auditor, was marked Plaintiff's Exhibit W for Identification.)

(Deposition of John Bassette Maher.)

Mr. Walkup: I offer this in evidence as Plaintiff's Exhibit W.

(Office memorandum heretofore marked Plaintiff's W for Identification was offered in evidence as Plaintiff's Exhibit W.)

Q. (By Mr. Walkup): I hand you now a document headed "Remittance Manifest," [89] and ask that you please identify that for the record.

A. This is a covering document for the remittance requested in the previous exhibits.

Mr. Walkup: Would you please mark this for identification as Plaintiff's Exhibit X.

(Certified photostatic copy of remittance manifest dated 7-28-1945 marked Plaintiff's Exhibit X for Identification.)

Q. (By Mr. Walkup): With reference to Plaintiff's Exhibit X for Identification, would you please explain what a remittance manifest is and how it is used in the accounting procedure of the Commission?

A. When a remittance is received by the Commission from any source whatever it comes in the form of a check—in some isolated instances in cash—but in all instances where another government department is concerned it is through a check from the Treasury Department.

For the accounting procedure it is necessary to record that remittance on its books but the check itself does not pass through the accounting department.

(Deposition of John Bassette Maher.)

That is deposited immediately by the Collections Department and a remittance manifest is prepared, which is then circulated through the organization or unit, to the Accounts Branch, where it is used as the accounting media for recording the collection on the Commission's books of account. [90]

Q. Is this remittance manifest, or rather the original of which this is a copy, an official record of the Maritime Commission? A. It is.

Q. And is a remittance manifest of this character prepared in the usual course of the official business of the Commission? A. It is.

Q. And is the original of this document on file in the official records of the Commission?

A. It is.

Q. I call your attention to the fact that the symbol number 69X0200 appears on the remittance manifest in two places. Will you explain the significance of the appearance of that symbol?

A. That means that that money was covered into the construction fund when it was deposited in the Treasury. That is, it was placed to the credit of the construction fund when it was covered into the Treasury.

Q. That construction fund is designated as what?

A. Construction Fund, United States Maritime Commission, Act of June 29, 1936, Revolving Fund.

Mr. Walkup: I offer this in evidence as Plaintiff's Exhibit X.

(The remittance manifest heretofore marked Plaintiff's X for Identification was offered in evidence as Plaintiff's Exhibit X.) [91]

(Deposition of John Bassette Maher.)

Q. (By Mr. Walkup): I hand you now a document bearing date of April 11, 1945, and ask you please to identify that document.

A. This is the formal invoice filed with the Navy by the Maritime Commission and is the transaction occurring prior to the previous exhibit. It is the basis for the remittance covered by the previous exhibit.

Mr. Walkup: Will you please mark that for identification as Plaintiff's Exhibit Y.

(Certified photostatic copy of invoice dated April 11, 1945, marked Plaintiff's Exhibit Y for Identification.)

Q. (By Mr. Walkup): Referring to Plaintiff's Exhibit Y for Identification, is that document, of which the exhibit is a copy, an official record of the Maritime Commission? A. It is.

Q. Is the invoice of which it is a copy prepared in the usual course and procedure of the Commission's business? A. It is.

Q. And is the original of this invoice on file with the other accounting records of the Commission? A. It is.

Q. I call your attention to the fact that the symbol 69X0200 appears on the invoice. What is the significance of [92] that?

A. That is to guide the deposit when the remittance is received.

Q. And is that to guide the deposit to the particular fund which you have already testified symbol 69X0200 designates? A. That is correct.



(Deposition of John Bassette Maher.)

Mr. Walkup: I offer this in evidence as Plaintiff's Exhibit Y.

(The invoice heretofore marked Plaintiff's Exhibit Y for Identification was offered in evidence as Plaintiff's Exhibit Y.)

Q. (By Mr. Walkup): I hand you now a document headed "Voucher for Transfers Between Appropriations and/or Funds," bearing date April 11, 1945. Would you please identify that document?

A. This document is a public voucher that is prepared simultaneously with and accompanies the previous exhibit. It is used wherever funds are transferred between federal appropriations.

Mr. Walkup: Would you please mark that as Plaintiff's Exhibit Z for Identification?

(Certified photostatic copy of "Voucher for Transfers Between Appropriations and/or Funds," marked Plaintiff's Exhibit Z, for Identification.)

Q. (By Mr. Walkup): Is this document an official record of the United [93] States Maritime Commission? A. It is.

Q. Is this type of document customarily prepared in the official business of the Maritime Commission with reference to accounting?

A. As between federal agencies, yes.

Q. And is the original of this document on file in the files of the United States Maritime Commission?

A. I am going to have to qualify my answer.

(Deposition of John Bassette Maher.)

The original of that document is not retained in the office of the Maritime Commission. It is in the Office of the Treasury and the bookkeeping copy is a part of the records of the Maritime Commission and is also on file to support our records and this is a copy of the copy retained.

Q. And is that the usual and customary procedure of the Maritime Commission with reference to such vouchers, that is, to retain one copy in its possession and send one copy forward?

A. We retain more than one copy. We retain a memorandum copy, but we retain an accounting copy or the bookkeeping copy also, which is made a part of the bookkeeping and accounting records of the Commission. That is a copy of that copy.

Q. I call your attention to the fact that this document bears the symbol 69X0200 "Construction Fund, United States Maritime Commission, Act of June 29, 1936, Revolving Fund." What is the significance of that symbol and identification? [94]

A. That indicates that the office that is doing the billing is going to deposit the collection when received in the "Construction Fund, United States Maritime Commission, Act of June 29, 1936, Revolving Fund, 69X0200."

Mr. Walkup: I offer this in evidence as Plaintiff's Exhibit Z.

(The Voucher for Transfers Between Appropriations and/or Funds, heretofore marked Plaintiff's Exhibit Z for Identification, was offered in evidence, as Plaintiff's Exhibit Z.)

(Deposition of John Bassette Maher.)

Q. (By Mr. Walkup): With reference to Hulls numbered 536 to 545, inclusive, did the Maritime Commission receive any funds whatsoever from the Navy Department, except the sum of \$1,529.50 to cover delivery charges as shown by the previous five exhibits? A. No, sir.

Q. Referring to the series of Maritime Commission Hulls numbered from 552 to 573, inclusive, concerning which you have previously testified, will you state further the manner in which the Maritime Commission received or recovered any funds from the Navy Department relating to these vessels?

A. I am not exactly clear as to how far I covered this in my previous testimony. I think I had better revamp it.

Q. I think it would be well. The other answer was not responsive to my question, and I think it would be well to start [95] anew and explain it.

Mr. Pentz: Just a minute. I am going to interpose a technical objection, to the question, on the basis it calls for an answer argumentative in nature.

The Witness: Off the record.

(Discussion off the record was had.)

The Witness: At the time arrangements were completed between the Maritime Commission and the Navy Department for the conversion of MC hulls 552 to 573, inclusive, the Technical Division of the Maritime Commission was requested to and did furnish the estimated costs of the conversion.

On the basis of this estimate the Budget Officer of the Maritime Commission requisitioned funds.

(Deposition of John Bassette Maher.)

through formal invoices and vouchers, from the Navy Department, to cover the costs of the conversion.

Upon receipt of these funds they were deposited in the Treasury under United States Maritime Commission Working Funds symbol 69X5900.056. At this time they were set up on the Commission's formal books of account as a reserve.

At the time of the analysis of the Commission's vessel construction cost account, it was determined that certain moneys disbursed from the Construction Fund were actually and properly chargeable to the cost of the conversion of MC Hulls 552 to 573, inclusive.

On the basis of this analysis and technical estimates, a [96] public voucher requesting the transfer of funds from the United States Maritime Commission Working Fund symbol 69X5900.056 to Construction Fund, United States Maritime Commission, Act of June 29, 1936, Revolving Fund, was issued.

This document became the basis for the actual transfer of the funds requested, and upon receipt of the accomplished documents, the funds were deposited in the Construction Fund.

Q. Relating to the conversion features of vessels 552 to 573, was the initial payment for those conversion features handled any differently by the Commission than the payment by the Commission for any other features of the vessels? A. No, sir.

Q. Against what Commission fund were the



(Deposition of John Bassette Maher.)

conversion charges for Hulls numbered 552 to 573 charged by the Commission?

A. Construction Fund, United States Maritime Commission, Act of June 29, 1936, Revolving Fund, 69X0200.

Q. Can you tell us the meaning of the symbol 69X5900.056?

A. The "69" is indicative of the agency, in this instance the Maritime Commission.

The "X" is indicative of the longevity of the appropriation involved. In other words, in this instance it is a no-year appropriation.

The "5900" is your serial.

"056" is your decimal limitation. It definitely limits the use of the funds under that symbol. [97]

Q. The reserve which you mentioned that the Commission set up upon receipt of the funds from the Navy was designated symbol 69X5900.056?

A. That is correct.

Q. And what type of fund would you call that?

A. That is a working fund.

Q. In line with your previous testimony earlier in the deposition?

A. That is correct.

Q. You have mentioned the transfer of funds from the Working Fund 69X5900.056 to the Revolving Fund, symbol 69X0200. On how many occasions was that type of transfer accomplished with reference to Hulls numbered 552 to 573?

A. Twice.

Q. What determined the time when such transfers were made?



(Deposition of John Bassette Maher.)

A. We normally clear our accounts on a quarterly basis. That was purely arbitrary and was not strictly adhered to.

The Notary Public: The witness is now excused until 10 o'clock tomorrow morning.

(Thereupon, at 5 o'clock p.m., the further taking of depositions was continued until October 2, 1947, at 10 o'clock a.m.) [98]

Thursday, October 2, 1947

(The further taking of the deposition of the witness John Bassette Maher was resumed at 9 o'clock a.m.; the parties present being Bruce Walkup, Attorney in behalf of the Plaintiff and Cross-Defendant, The Permanente Metals Corporation, a corporation; Mr. Elliott H. Pentz, Attorney on behalf of the Defendants and Cross-Complainants, John Urquhart Birnie, an individual doing business as Birnie Electric Company, and Massachusetts Bonding and Insurance Company; The Notary Public, John P. Labofish; the Reporter, Mrs. Chloe S. MacReynolds; and the witness, John Bassette Maher.)

The Notary Public: Mr. Maher, you are reminded that you are still under oath.

JOHN BASSETTE MAHER

a witness produced on behalf of the Plaintiff and Cross-Defendant, The Permanente Metals Corpora-

(Deposition of John Bassette Maher.)

tion, a corporation, having been previously sworn to state the truth, the whole truth, and nothing but the truth, testified further on his oath as follows:

Direct Examination

By Mr. Walkup:

Q. I hand you now a document bearing date of June 6, 1945, and entitled "Voucher for Transfers Between Appropriations and/ or Funds." [99]

Will you briefly identify what that document is and then I will ask you some further questions concerning it.

A. This document is again, a public voucher used as a medium for requesting and securing and exchanging funds between federal agencies and appropriations.

Q. What is the date of the document?

A. June 6, 1945, was the date on which it was prepared and passed by the Department.

Q. Does it consist of more than one sheet?

A. It consists of two sheets; the basic sheet of the document form supported by a schedule of the amount to be transferred.

Mr. Walkup: I ask that it be marked for identification as Plaintiff's Exhibit AA.

(Certified photostatic copy of Voucher for Transfers Between Appropriations and/or Funds, dated June 6, 1945, marked Plaintiff's Exhibit AA for Identification.)

Q. (By Mr. Walkup): Referring further to

(Deposition of John Bassette Maher.)

Plaintiff's Exhibit AA for identification, will you please explain the reference to the symbol numbers 69X0200 and 69X5900.056 appearing on the face of the voucher?

A. In the upper block the use of the symbol 69X0200 (the upper block being the block to enter the information necessary for the accounting of the funds by the billing office) [100] the use of the symbol indicates the fund to the credit of which the moneys are to be deposited in the Treasury of the United States upon collection.

Under the lower block, office to be billed, the use of the symbol 69X5900.056 indicates the fund from which the disbursement is to be made.

Q. Are both funds 69X0200 and 69X5900.056 funds maintained by the Maritime Commission?

A. Yes, sir.

Q. The designation "69" in each symbol refers to the Maritime Commission, does it not?

A. That is right, sir.

Will you repeat the last question, please?

(Thereupon, the last question was read by the reporter, as follows:)

"Question: The designation '69' in each symbol refers to the Maritime Commission, does it not?"

The Witness: That is correct.

Q. (By Mr. Walkup): This document marked Plaintiff's Exhibit AA for identification is an official record of the Maritime Commission, is it not?

A. That is correct, sir.

(Deposition of John Bassette Maher.)

Q. And when I say "this document" I refer of course to the document of which this is a photostatic copy? [101]      A. That is correct.

Q. Are documents of this character kept in the usual course of accounting procedure of the Commission?

A. Where the transaction is between federal agencies and/or appropriations.

Q. And the original document, of which this is a copy, is a record of the Maritime Commission, is it?      A. It is, sir.

Q. Would you please explain the meaning of the schedule and in particular the reference to "California;" "Permanente;" "Kaiser Co.;" "Oregon"?

A. The schedule itself is a compilation of estimated costs prepared by the Technical Division as a basis for recovery of the conversion features of those costs from the Navy Department.

The distribution of the charges as between shipyards is due to the fact that the working fund, symbolized as 69X5900.056 was provided to finance the costs of the conversion features, of MC Hulls 552 to 572, inclusive, in addition to hulls under construction at other yards and under other contracts.

The amounts distributed are based on the individual hull cost, with respect to the conversion features times the number of hulls being constructed in the given yard.

Following that, Permanente Metals Corporation, under this particular analysis and involving the

(Deposition of John Bassette Maher.)

particular conversion [102] features, is having allocated to its contract the sum of \$22,582,500 representing 15 vessels.

Q. In your answer you referred to other builders for the Commission. Do the other builders have any identification with the words "California;" "Kaiser Co.;" and "Oregon" and if so, what connection?

A. If I follow your question, California Shipbuilding Corporation is a builder employed under contract by the Maritime Commission for the construction of vessels in the same manner as is The Permanente Metals Corporation, the Kaiser Company, and the Oregon Shipbuilding Corporation.

Q. Does the word "California" then refer to California Shipbuilding Corporation?

A. It is expressed "California S. B. Corporation" which indicates California Shipbuilding Corporation.

Q. And does the word "Kaiser Co." refer to Kaiser Company, Inc., another contractor for the Maritime Commission?

A. That is correct.

Q. And does the word "Oregon" refer to the Oregon Shipbuilding Corporation, another contractor for the Maritime Commission?

A. "Oregon S. B. Corporation" stands for Oregon Shipbuilding Corporation, another contractor.

Q. To further clarify this schedule, under the name of each builder appears a series of numbers. Do those numbers [103] represent the Maritime Commission hull numbers under contract by the



(Deposition of John Bassette Maher.)

Commission's builders designated, that is, California, Permanente, Kaiser Company and Oregon, respectively?

A. In the top assembly of numbers the numbers listed under the individual shipyards named represent the hull numbers involved in this particular cost analysis being built by the shipyard indicated by the name directly above the assembly of numbers.

Q. In other words, would it be correct to say that this voucher, which is for a total sum of \$143,-889,000 covers a transfer from fund 69X5900.056 to fund 69X0200 relating to costs incurred by the Commission under contracts with California Shipbuilding Corporation; the Permanente Metals Corporation; Kaiser Company, and Oregon Shipbuilding Corporation? A. That is correct.

Q. This transaction was handled then by one voucher, rather than by separate vouchers for each particular contractor with the Commission mentioned in those four names?

A. That is correct.

Q. This covers, in the case of Permanente, 15 vessels with hull numbers as designated under the column "Permanente"? A. That is correct.

Q. Do you know hull numbers in the case of Permanente or can you tell the hull numbers from the exhibit?

A. The hull numbers there represent 15 of the 22 hulls [104] under this particular contract. Off the record.

(A discussion off the record was had.)

(Deposition of John Bassette Maher.)

Mr. Walkup: Is it understood the witness can read from the original rather than from the photostatic copy, and that no objection is made on those grounds?

Mr. Pentz: None whatever.

The Witness: We have here Hulls 552 to 556. That is a sequence of five hulls.

571 to 573——

Q. (By Mr. Walkup): Just so there will be no question about it, the particular hulls listed under Permanente then are 552 to 556; 558, 560, 562, 564, 567, 569, 571 to 573 and 565: Is that correct?

A. That is correct, with the word “inclusive,” after “571 to 573,” and after “552 to 556.”

Mr. Walkup: I offer the exhibit now marked for identification as Plaintiff's Exhibit AA, in evidence. Mr. Pentz, is there any objection on the grounds the questions I have been asking about the document were asked prior to the offer in evidence?

Mr. Pentz: None, on this condition: That if I have erred likewise in the taking of the deposition of the Secretary of the Navy it be understood now you make the same waiver of objection for my benefit.

Mr. Walkup: That would apply, then, to the previous [105] exhibits that I have introduced, as well?

Mr. Pentz: In all cases.

Mr. Walkup: In other words, if I questioned a witness about a document, other than merely laying the foundation for the document before offering

(Deposition of John Bassette Maher.)

it in evidence, no objection will be made on that ground alone, assuming that the document is later offered in evidence?

Mr. Pentz: None, on the condition that it appear now that you so agree in my case in so far as my conduct as you described in your own case bears to the taking of the deposition of the Secretary of the Navy.

Mr. Walkup: That is correct.

Mr. Pentz: Very well.

(Voucher heretofore marked Plaintiff's Exhibit AA for Identification, was offered in evidence as Plaintiff's Exhibit AA.)

Q. (By Mr. Walkup): Getting back, then, to this Exhibit AA, and referring further to the schedule, under the column "Permanente," the second column "Conversion Costs Per Vessel," will you explain please the meaning of that?

A. The original contract stipulated a total contract price for the construction of the entire group of vessels in accordance with the original design.

After the contract had been in process for some time, arrangements were made with the Navy Department to transfer [106] certain of these vessels upon completion to the Navy Department on a loan basis.

It was further agreed that certain changes in design or conversions would be incorporated in the vessel prior to its completion and delivery to the Navy Department. The incorporation of the con-

(Deposition of John Bassette Maher.)

version features entailed additional construction expense, which the Navy agreed to bear.

The Maritime Commission, through its Technical Division, established an estimated cost of the conversion features. Those costs were distributed among the various elements of cost, material, labor, overhead and profit, arriving at a unit cost per vessel of the conversion features.

Q. Do the figures shown in the column under the heading "Permanente" opposite the heading "Conversion Costs Per Vessel," that is, material, \$590,000; labor, \$516,000; overhead, \$345,000; and profit, \$54,500, or a total figure of \$1,505,500, represent the estimate of the Maritime Commission, Technical Division, per vessel, for the conversion costs of making the conversion of the original Maritime Commission hulls to the hulls incorporating certain other features? A. That is correct.

Q. Was the cost of the conversion features kept separately for each vessel?

A. Not on the records of the Maritime Commission.

Q. Does the figure \$1,505,500 just mentioned represent [107] an estimate per vessel for each of the vessels designated by the hull appearing first under the heading "Permanente" for conversion costs?

The Witness: Will you please repeat the question?

(Pending question read.)

The Witness: It does.

(Deposition of John Bassette Maher.)

Q. (By Mr. Walkup): So that the total estimated cost of the conversion features for the 15 vessels designated is shown in the column headed "Total Conversion Cost by Yards," under the heading "Permanente" to be \$22,582,500?

A. That is right.

Q. Was that sum, together with other sums totalling \$143,889,000 covered by this voucher designated as Plaintiff's Exhibit AA?

A. It was.

Q. Is it also true that in each case the Commission originally paid those costs for conversion features out of fund 69X0200?

A. That is correct.

Q. You mentioned in your previous testimony that on two occasions transfers of funds were made to fund 69X0200 from fund 69X5900.056; was the first occasion the occasion represented by Exhibit AA?

A. It was. [108]

Q. And that was on June 6, 1945?

A. That is correct.

Q. Following June 6, 1945, what method was used for the payment of the conversion costs to and including the time of the making of the second transfer of funds?

A. The conversion cost was continually charged throughout the life of the contract to the Construction Fund, symbolized as 69X0200.

Q. I hand you now a document bearing date of January 22, 1946, headed "Vouchers for Transfers."



(Deposition of John Bassette Maher.)

Will you please identify briefly that document for the record?

A. This is a public voucher used to effect transfers of moneys between federal appropriations and agencies.

Q. Does the document consist of more than one page?

A. The document consists of the basic document and a supporting schedule.

Q. Is that document substantially the same type of document as Plaintiff's Exhibit AA?

A. It is identical to Plaintiff's Exhibit AA.

Q. Is it identical even as to the writing of figures or do you mean identical in effect?

A. I misunderstood the question. It is identical in its effect with Plaintiff's Exhibit AA.

Mr. Walkup: May I have this document marked for identification as Plaintiff's Exhibit BB? [109]

(Certified photostatic copy of Voucher for Transfers Between Appropriations and/or Funds marked Plaintiff's Exhibit BB for Identification.)

Q. (By Mr. Walkup): Is the document of which this is a copy an official record of the Maritime Commission? A. That is correct.

Q. Is a record of this character kept in the regular course of official business of the Maritime Commission? A. It is.

Q. And is the document, of which this is a photostatic copy, on file in the records of the Maritime Commission? A. It is.

(Deposition of John Bassette Maher.)

Mr. Walkup: I offer this in evidence as Plaintiff's Exhibit BB.

(The voucher heretofore marked Plaintiff's Exhibit BB for Identification was offered in evidence as Plaintiff's Exhibit BB.)

Q. (By Mr. Walkup): Referring further to Plaintiff's Exhibit BB, would you explain please the meaning of the use of the two symbols numbered 69X0200 and 69X5900.056 appearing on the voucher?

A. On the document under the upper block, entitled "Accounting Classification (for completion by the billing office)," the use of the symbol 69X0200 is to indicate the appropriation [110] or fund to the credit of which the collection is to be deposited.

In the lower block, entitled "Accounting Classification (For completion by the Office Billed)," the use of the symbol 69X5900.056 is to indicate the fund from which the disbursement is to be made.

Q. Does the voucher then represent a transfer of the \$32,173,500 from fund 69X5900.056 to fund 69X0200?      A. It does.

Q. Referring now to the second page of the exhibit, will you please explain the meaning of the headings for the four columns, which are headed "California;" "California;" "Permanente;" and "Vancouver" opposite the title "Builder"?

A. In this instance the use of the titles "California" represents a combination of the two first

(Deposition of John Bassette Maher.)

designations. "California" to the left represents the total moneys paid to the California Shipbuilding Corporation.

Q. I don't believe I made my question clear. Does the word "California" appearing first following the word "Builder" refer to California Shipbuilding Corporation? A. It does.

Q. Does the second word "California" appearing opposite the word "Builder" likewise refer to the California Shipbuilding Corporation?

A. It does. [111]

Q. Does the word "Permanente" refer to The Permanente Metals Corporation? A. It does.

Q. Does the word "Vancouver" refer to Kaiser Co., Inc., Vancouver shipyard? A. It does.

Q. Opposite the heading "Outfitter" does the word "Moore D. D." refer to——

A. Moore Dry Dock Company, of Oakland, California, it does.

Q. Does the word "Vancouver" opposite the heading "Outfitter" refer to Kaiser Co., Inc., Vancouver Shipyard? A. It does.

Q. Does the word "Richmond #3" opposite the word "Outfitter" refer to Kaiser Co., Richmond Shipyard #3? A. It does.

Q. Does the word "Vancouver" appearing opposite the word "Outfitter" refer to Kaiser Co., Inc., Vancouver Shipyard? A. It does.

Q. What is the distinction, if you know, between

(Deposition of John Bassette Maher.)

the term "Builder," and "Outfitter," as used in the document?

A. Specifically I am not prepared to answer the question.

Q. Referring now to the heading "Conversion" on page 2 of the Exhibit, and under the column "Permanente," what do the [112] headings "Material;" "Labor;" "Overhead;" and "Profit" under the word "Conversion," coupled with the numbers 590,000; 610,000; 401,500 and 60,000 represent?

A. It is a breakdown to the various elements of cost involved in the conversion features.

Q. Is that an estimate, as was the case in Plaintiffs Exhibit AA?

A. That is an estimate prepared by the Technical Division of the Maritime Commission.

Q. Is that a figure per vessel?

A. That is a figure per vessel.

Q. What does the figure \$1,661,500 appearing under the heading "Permanente" opposite the heading "Est. Conversion" represent?

A. It represents the estimated cost of the conversion in total per vessel.

Q. And what is meant by the heading "Est. Base Vessel" appearing under the heading "Conversion"?

A. That is the construction cost of the vessel based on the original design.

Q. Is that a determined cost or is it an estimated cost?

A. It is a determined cost in so far as the con-

(Deposition of John Bassette Maher.)

tract is concerned. All costs are based and bid on an estimated basis. This represents the cost that was fixed in the contract [113] for the construction of the vessels.

Q. What is meant by the term "Base Vessel" as used?

A. That is the vessel as it was originally designed to be built.

Q. That would be without the conversion features?

A. Without the conversion features.

Q. Then would the total estimated cost, as shown by this exhibit, for the base vessel, with the addition of the conversion features, total \$4,601,000 per vessel as indicated by the last heading under the heading "Conversion," that is, "Est. Complete Cost Per Vessel"?

Let me withdraw that and ask it another way.

What is the meaning of the heading "Est. Complete Cost Per Vessel"?

A. That is the cost of a vessel complete with conversion features added.

Q. And how would that total of \$4,601,000 be determined?

A. It is a combination of the original cost of the vessel based on the original design plus the estimated cost of the conversion features.

Q. What are those features, as appear from the exhibit, the figures that give the total?

A. Are you asking me to read the figures?

Q. Yes.



(Deposition of John Bassette Maher.)

A. \$4,601,000 per vessel, including base vessel and cost [113-A] of conversion features.

Q. What I am asking you for is the figures that makes the total of \$4,601,000 per vessel.

A. That figure is broken down into the following:

Estimated cost of conversion, \$1,661,500.

Estimated cost of base vessel, \$2,939,500.

Q. Referring back to Plaintiff's Exhibit AA, and particularly to the figure of \$1,505,000 appearing as a total under the heading "Permanente" does that figure represent an estimated total cost of the vessel or merely an estimate of the total conversion cost?

A. An estimate of the total conversion cost per vessel.

Q. Does Plaintiff's Exhibit AA reflect or show the estimated cost of the base vessel?

A. It does.

Q. Referring again to Plaintiff's Exhibit BB will you explain please the meaning of the long-hand notations on the second sheet with particular reference to any vessels of The Permanente Metals Corporation?

A. The penciled notations appearing on the bottom of the exhibit represent the distribution of the total transfer covered by the public voucher to the various shipyards participating in the vessel construction covered by the Navy Working Fund symbolized as 69X5900.056.

(Deposition of John Bassette Maher.)

Q. What is the meaning of the figure 7 X \$1,661,500 [113-B] equal \$11,630,500?

A. That means in the total group of vessels covered by this particular transfer, seven of them are being built by Permanente Metals Corporation.

The unit cost of each of the seven vessels covering the conversion features only is \$1,661,500, which, multiplied by 7, gives you a total of \$11,630,500.

Q. Then the other notations 4 X \$1,792,000, in the case of California Shipbuilding Corporation; 5 X \$1,555,000 also in the case of California Shipbuilding Corporation; and 4 X \$1,400,000 in the case of Kaiser Co., Inc., are the same type entries as that just described in the case of Permanente?

A. That is correct.

Mr. Walkup: Off the record.

(A discussion off the record was had.)

Q. (By Mr. Walkup): And the total of \$32,173,500 represented by the voucher is the total of the four figures: \$7,168,000; \$7,775,000; \$11,635,000 and \$5,600,000 appearing in the longhand notations?

A. It is.

Q. Is it correct to state, then, that the total sum of \$32,173,500 covers only conversion costs as distinguished from any charges for the base vessel cost?

A. It is correct. [114]

Q. Does the voucher, Plaintiff's Exhibit BB, have the effect of transferring any funds from 69X5900.056 to 69X0200 in so far as base vessel costs are concerned?

A. It does not.

Q. Do the two transfers of funds represented

(Deposition of John Bassette Maher.)

by Plaintiff's Exhibits AA and BB represent the total amount of funds transferred from fund 69X-5900.056 to fund 69X0200, relating to the hulls designated as Permanente Hulls on the two exhibits?

A. With respect to Permanente contract and MC Hulls 552 to 573, inclusive, they do.

Q. Referring to the records which have been previously introduced in your deposition, can you state the total amount paid by the Navy Department toward the conversion and delivery costs of Hulls numbered 552 to 573, inclusive?

A. I can.

Q. Will you do so, please? A. \$34,213,000.

Q. How do you determine that total figure, please?

A. By adding the totals applicable to the Permanente contract on the two vouchers.

Q. What were the two figure which you added?

A. With respect to the voucher dated June 6, 1945, \$22,582,500; and with respect to the voucher dated January 22, 1946, \$11,630,500.

Q. Was the total of \$34,213,000, which you have just [115] given, the total cost to the Maritime Commission of the construction of the vessels known as Maritime Commission Hulls numbers 552 to 573?

A. It was not.

Q. What was the total cost to the Maritime Commission of the vessels numbered 552 to 573?

A. As established by Addendum No. 3 to Contract MCc15762 the total cost was established at \$89,500,000.

(Deposition of John Bassette Maher.)

Q. What accounts for the difference between the sum of \$89,500,000, which you have just given, and the total cost of \$34,213,000, which you previously gave?

A. The construction costs of the vessels based on the original design, which was paid for and absorbed by the Maritime Commission.

Q. Is it correct, then, that the total cost of \$89,500,000, represents the base vessel costs, plus the conversion features of the total value of \$34,213,000?

A. That is correct.

Q. So that the difference between the sum of \$34,213,000 and \$89,500,000, would represent the base vessel cost for hulls numbered 552 to 573?

A. That is correct.

Q. By whom were the base vessel costs paid?

A. By the Maritime Commission.

Q. Has the Maritime Commission been reimbursed by the [116] Navy for the base vessel costs paid by the Commission?      A. It has not.

Q. What method was followed in the performance of Contract MCc15762 with reference to the making of payments by the Maritime Commission to the builder, The Permanente Metals Corporation?

A. The builder submits progressively, applications for payment which are entitled to, in addition to the shipyard representative, by the Commission's Resident Auditor.

The applications are supported in detail by the expenditures made to date by the shipbuilder dur-



(Deposition of John Bassette Maher.)

ing the course of the work and show the aggregate of the work to that time, less any payments previously made.

The voucher is paid by the Maritime Commission in the amount of the total payments to date less the payments previously made.

Those payments are made by the Maritime Commission from its Construction Fund symbolized as 69X0200.

Q. I hand you now a document bearing date of December 28, 1943, and request you to please identify that document.

A. That is a document used as the basis for the issuance of a check to a creditor of a federal agency.

Mr. Walkup: Will you kindly mark that for identification as Plaintiff's Exhibit CC?

(Certified photostatic copy of voucher, dated December 28, 1943, to The Permanente Metals Corporation, marked Plaintiff's Exhibit [117] CC for Identification.)

Q. (By Mr. Walkup): Will you please explain how the document, of which this is a copy, referred to as Plaintiff's Exhibit CC, is prepared?

A. The document is prepared in the shipyard. It is certified to by the Resident Auditor as correct and is supported by the shipbuilder's schedule of costs incurred in the prosecution of the contract to that point.

Q. Referring to the public voucher itself, is that document, of which the exhibit is a copy, part of the official records of the Maritime Commission?



(Deposition of John Bassette Maher.)

A. It is.

Q. And is it a document prepared in the regular course of official business of the Maritime Commission?

A. It is.

Q. Will you state please what this public voucher represents?

A. This particular voucher represents the payment of the first application submitted by The Permanente Metals Corporation in connection with work performed to date, in connection with Contract MCc15762.

Q. What is the meaning of the words "Construction Progress Payment No. 1" appearing on the document?

A. Progress Payment applications submitted by the contractor [118] are identified by a numeric designation beginning with 1, and continuing through to the last application submitted in numerical sequence.

Q. I call your attention to the words "69X0200 Construction Fund, U. S. Maritime Commission, Act of June 29, 1936, Revolving Fund," appearing under the heading "Accounting Classification" on the document. Will you please explain the meaning of the symbol as used there and the wording as used there?

A. Under the block entitled "Accounting Classification (For Completion By Administrative Office)," the symbol 69X0200 is used to indicate to the Treasury Department the fund or appropriation from which the disbursement is to be made.

(Deposition of John Bassette Maher.)

Q. Does this voucher then indicate a payment to Permanente by the Maritime Commission of \$3,123.22, as a first construction progress payment chargeable to fund 69X0200? A. It does.

Mr. Walkup: I offer the document in evidence as Plaintiff's Exhibit CC.

(The voucher heretofore marked Plaintiff's Exhibit CC for Identification was offered in evidence as Plaintiff's Exhibit CC.)

Q. (By Mr. Walkup): Mr. Maher, I hand you now another document bearing date of May 9, 1945. Will you kindly identify that document [119] briefly?

A. That again, is a public voucher used as the basis for the disbursement of funds or the issuance of a check to a creditor of the Maritime Commission for services performed.

Mr. Walkup: May I have that marked for identification as Plaintiff's Exhibit DD?

(Certified photostatic copy of voucher dated May 9, 1945, to The Permanente Metals Corporation was marked Plaintiff's Exhibit DD for Identification.)

Q. (By Mr. Walkup): Is the document of which this is a copy a part of the official records of the United States Maritime Commission?

A. It is.

Q. Is a document of this character prepared in the usual course of official business of the Maritime Commission? A. It is.

(Deposition of John Bassette Maher.)

Q. Will you please state in more detail what this particular voucher represents?

A. This voucher represents the payment of the last application submitted by The Permanente Metals Corporation in connection with the performance of its contract, No. MCc15762 with the Maritime Commission.

Q. What is the number of that construction progress payment? A. No. 420.

Q. Is it correct that there were 420 separate construction [120] progress payments starting with Payment No. 1, as indicated by the previous exhibit, and ending with Payment No. 420 as indicated by this exhibit? A. That is correct.

Q. And were each of the payments made in the same manner, that is, pursuant to a public voucher such as that shown by this exhibit and the preceding exhibit? A. That is correct.

Q. Is the meaning of the accounting classification 69X0200, Construction Fund, U. S. Maritime Commission, Act of June 29, 1936, Revolving Fund, the same on this exhibit as on the immediately preceding exhibit? A. It is.

Q. Were all of the payments made, commencing with Progress Payment No. 1 to and including Progress Payment No. 420 charged to the same fund, that is, 69X0200? A. They were.

Q. What is the amount of the total payment from the Maritime Commission to The Permanente Metals Corporation under Contract MCc15762?

A. Roughly, \$145,000,000.

(Deposition of John Bassette Maher.)

Mr. Pentz: Will you read the question, please?

(Thereupon, the last question was read, as follows:)

“Question: What is the amount of the total payment from the Maritime Commission to The Permanente Metals [121] Corporation under Contract MCc15762?”

The Witness: The aggregate of the progress payments, 1 to 420, as far as I can recall, is roughly \$145,000,000.

Q. (By Mr. Walkup): That would be the total of \$89,000,000, referred to in Addendum No. 3 to Contract 15762 plus the sum of approximately \$56,000,000, which was carried over from Contract 15762 to Contract MCc36452, as testified to by you yesterday afternoon? A. That is correct.

Q. I hand you now a document consisting of four pages entitled “Permanent Report of Completed Ship Construction Contracts, United States Maritime Commission, Construction Division, Washington, D. C.” and ask you please to identify that document.

A. These particular sheets are excerpts from a published report of the Maritime Commission, which reflects the type of vessel under construction, the contract number, the Commission’s hull numbers; the builder’s hull numbers; the original name of the vessel—

Q. Mr. Maher, I will ask you to explain in further detail what the document shows?

(Deposition of John Bassette Maher.)

A. It reflects the status of vessels as of the date of the issue of the report.

Mr. Walkup: May I have that marked for identification as Plaintiff's Exhibit EE? [122]

(Excerpts from published report of Maritime Commission, entitled "Permanent Report of Completed Ship Construction Contracts" marked Plaintiff's Exhibit EE for Identification.)

Q. (By Mr. Walkup): Is the original document, from which these pages are excerpts, an official record of the United States Maritime Commission? A. It is.

Q. Is this record kept by the United States Maritime Commission as part of the regular official business of the Maritime Commission?

A. It is.

Mr. Walkup: I offer this document in evidence as Plaintiff's Exhibit EE.

(The excerpts from published report of Maritime Commission heretofore marked Plaintiff's Exhibit EE for Identification was offered in evidence as Plaintiff's Exhibit EE.)

Q. (By Mr. Walkup): Referring to page 17B, will you state please the meaning of the term "Type" appearing in the first column?

A. The symbols shown there represent the particular type of vessel under construction under the particular contract.



(Deposition of John Bassette Maher.)

Q. What is the meaning of the column headed "Propulsion"? [123] A. Turbine; steam.

Q. That is the method of propulsion of the vessel? A. That is right.

Q. What is the meaning of the heading "Contract Number"?

A. That is the contract number assigned to the contract upon its execution; the identifying number maintained by the Commission throughout the life of the contract.

Q. Does that refer to the contracts between the Maritime Commission and the builder, such as Permanente Metals Corporation? A. It does.

Q. What is the meaning of the heading "MCV Hull No."?

A. That is the identifying symbol of the hull maintained by the Maritime Commission and assigned to that hull by the Maritime Commission.

Q. What is the meaning of the heading "Builder's Hull No."?

A. That is the identifying number assigned to the hull by the builder.

Q. What is the meaning of the column entitled "Original Name"?

A. That is the name of the vessel given to it by the Maritime Commission.

Q. What is the meaning of the heading "Original Operator"? [124]

A. That is the operator who was originally earmarked to receive the vessel for operation.

(Deposition of John Bassette Maher.)

Q. Does that necessarily indicate the present operator?      A. Not necessarily.

Q. What is the meaning of the column headed "Builder"?

A. That is the shipbuilder who, under the contract with the Commission, built the vessel.

Q. What is the meaning of the heading "Date of Contract"?

A. That is the date on which the contract was executed between the Commission and the shipbuilder.

Q. What is the meaning of the heading "Delivery date" referring to the heading "Delivery date" under the "Contract Dates"?

A. That is the date on which it was estimated that the vessel would be delivered.

Q. In other words, this heading "Delivery date" which appears under the superimposed heading "Contract Dates" refers to the delivery date as set forth in the contract?      A. That is correct.

Q. That is not necessarily the actual delivery date?      A. No, sir.

Q. Referring then to the heading "Actual Construction Dates" and to the three headings under that column entitled "Keel Laid;" "Launched;" and "Delivered," will you state please the meaning of those headings? [125]

A. Those headings cover the actual technical activities performed in the shipyard, beginning with the keel laying and carrying on through the various operations.

(Deposition of John Bassette Maher.)

I would rather not go into any detail on that.

Q. Do you know if the heading "Keel laid" designates the date that the keel of each vessel indicated in the list was actually laid?

A. Not of my own knowledge.

Q. I don't mean by that were you actually present at the laying of each keel, but I mean as the document appears do you know whether or not that column signifies the date of keel laying merely to identify the various columns appearing on the document?

A. The heading of the columns would signify that.

Q. And would the same be true as to the heading of the column designated "Launched"?

A. That would be the implication given by the heading of the column.

Q. And also the heading "Delivered"?

A. I can answer that question because we have certificates of delivery. That is the date on which the vessel was delivered by the shipbuilder and accepted by the Maritime Commission.

Q. You mentioned delivery certificates; what do you mean by that? [126]

A. At the time the completed vessel is delivered and accepted by the Maritime Commission from the shipbuilder a certificate is prepared in multiple copies which recites the date, the time, the name of the vessel, and other data pertinent to the transaction, copies of which are distributed to the various parties concerned, of which our office is one.

(Deposition of John Bassette Maher.)

Q. So that the column entitled "Delivered" under the superimposed heading "Actual Construction Dates" refers to the actual date of delivery of the vessel from the shipbuilder to the Maritime Commission, as shown on the official delivery certificates? A. That is correct.

Q. Referring now to page 18B and also to page 19B, where the headings of the columns are slightly different from the headings on page 17B, the first difference in headings of the columns appears to be that one column is designated as "Name," on pages 18B and 19B, and as "Original Name" on page 17B. What is the meaning of the heading "Name" which appears on pages 18B and 19B?

A. As far as my experience is concerned there is no difference. I do not know why it is stated differently in the report.

Q. And likewise on pages 18B and 19B one column is headed "Operator" whereas on page 17B that column is headed "Original Operator." What is the meaning of the heading [127] "Operator" appearing on page 18B?

A. I don't know why it should be stated differently. The effect is the same, in that the operator originally designed to receive the vessel is usually noted in that column.

Q. Then would it be correct to state that the column headed "Operator" on pages 18B and 19B designates the original operator rather than the present operator of the vessels?

A. That is correct.

(Deposition of John Bassette Maher.)

Q. There is one additional column appearing on pages 18B and 19B which did not appear on page 17B, and that is the heading "Percentage of Completion Total." What is the meaning of that column?

A. The progress report published periodically reflects the percentage of completion of the given vessel as of the date of the report.

Q. Other than the headings specifically mentioned on pages 18B and 19B would your designation of those column headings be the same as you have testified for page 17B? A. That is right.

Mr. Walkup: At this time I would like to renew my offer of all of the exhibits which have been marked for identification in this deposition, with the understanding that the offer is made separately as to each of the exhibits identified, to cover the contingency that I may have neglected to offer each document separately during the examination of the witness. [128]

(All exhibits marked for identification as Plaintiff's Exhibits in this deposition were offered in evidence as Plaintiff's Exhibits so marked.)

Mr. Walkup: That is all on direct.

Mr. Pentz: Off the record.

(A discussion off the record was had.)

The Notary Public: At 11:45 o'clock a.m. this hearing is adjourned until 1:30 o'clock p.m. at the same place.



(Thereupon, at 11:45 o'clock a.m. an adjournment of the depositions was taken to 1:30 o'clock p.m. October 2, 1947.)

(Thereafter, at 1:30 o'clock p.m., on October 2, 1947, the further taking of the depositions was resumed.)

JOHN BASSETTE MAHER

a witness produced on behalf of the Plaintiff and Cross-Defendant, The Permanente Metals Corporation, having been previously sworn, testified further on his oath, as follows:

Cross-Examination

By Mr. Pentz:

Q. Mr. Maher, I direct your attention to Plaintiff's Exhibit EE, and more particularly to page 17B, and specifically to the column entitled "Date of Contract," which is below the superimposed words "Contract Dates," and ask you whether or not the dates which appear in that designated vertical column [129] indicates the date when the contracts were signed, or whether it indicates the date which the contracts bear, if you know?

A. It indicates the date on which the contract was entered into between the parties to the contract.

Q. What do you base your statement on as to when the contract is entered into?

A. Speaking as a layman, on the preamble to the language of the contract itself—the contract entered into on such and such date between so-and-so and so-and-so.

(Deposition of John Bassette Maher.)

Q. In other words you are referring to the date which appears on the face of the contract?

A. In the language of the contract, as opposed to any date that may be at the top of the contract.

Q. Am I correct in assuming that you refer to a date which in one form or another is specifically set forth in the body of the contract?

A. That is correct.

Q. The answer would be the same, would it, with regard to a like question propounded to you with regard to the dates appearing vertically below the heading "Date of Contract," under the superimposed words "Contract Dates," as they appear on page number 18B? A. That is correct.

Q. And likewise your testimony would be identical if the same question were propounded to you with regard to the [130] dates appearing in the vertical line under the heading "Date of Contract," under the superimposed words "Contract Dates" appearing on page number 19B?

A. That is correct.

Q. I take it, Mr. Maher, that the original of the document, of which Plaintiff's Exhibit EE is a copy, is an official document of the United States Maritime Commission? A. That is correct.

Q. Is it or is it not true that the original of which I speak, in so far as you know, contains accurate information?

A. I can answer that in this manner: The information reflected by the documents is relied on by

(Deposition of John Bassette Maher.)

our organization. By "our organization" I refer to my specific department in the development and preparation of statements.

Q. May I ask you whether or not you have any information to the effect that the entries contained in Plaintiff's Exhibit EE are not true and accurate reflections of the facts which they purport to state?

A. I have no such information.

Q. Drawing your attention on page number 17B, of Plaintiff's Exhibit EE, under the words "Actual Construction Dates," more particularly the column entitled "Keel Laid," I direct your attention to the dates which appear vertically below: Do you have any knowledge or information that the entries therein contained are not true and accurate?

A. I do not. [131]

Q. Directing your attention to the word "Launched," also appearing under the superimposed words "Actual Construction Dates," and more particularly the dates appearing in the vertical line thereunder, do you have any information or knowledge that the entries therein contained are not true and accurate?

A. Confining my answer to the vertical column captioned "Launched," I do not.

Q. Would your testimony be the same if the identical question was propounded to you with regard to the column entitled "Keel Laid," under the superimposed words "Actual Construction Dates," appearing on page number 18B?

The Witness: Will you read the question?

(Deposition of John Bassette Maher.)

(Pending question read by the reporter.)

The Witness: Yes, sir.

Q. (By Mr. Pentz): Would your testimony be the same if the identical question were propounded to you with regard to the dates appearing vertically below the word "Launched," in turn appearing under the superimposed words "Actual Construction Dates," on page number 19B?

A. Yes, sir.

Q. Mr. Maher, I direct your attention to Plaintiff's Exhibit AA, more particularly to the schedule attached thereto, starting with the words "Engineering Estimates of Conversion [132] Costs," et cetera. I believe—and correct me if I am mistaken—that your testimony was that the figure \$1,505,500 appearing under the heading "Permanente" represents the estimated costs of conversion features of the vessels whose Maritime designation numbers appear immediately below the word "Permanente."

A. That is correct with respect to an estimate per vessel.

Q. And that therefore the figure \$22,582,500 appearing below and opposite the words "Total Conversion Cost (By Yards)" represents the estimated cost of the conversion features of the vessels enumerated by Maritime Commission numbers immediately beneath the word "Permanente," that that \$22,582,500 represents the total estimated cost of conversion features for the entire 15 vessels.

A. That is correct.

Q. As I understood your testimony, that repre-



(Deposition of John Bassette Maher.)

sented a sum which was originally advanced by the United States Maritime Commission by withdrawal from its "Construction Fund, United States Maritime Commission, Act of June 29, 1936, Revolving Fund" known by the Maritime Commission symbols 69X0200.

A. The \$22,582,500 represents direct disbursements from the Maritime Commission Construction Fund to The Permanente Metals Corporation upon application and in connection with payments due under that contract. [133]

Q. What, if anything, was done, if you know, with regard to the payment into your United States Maritime Commission Working Fund known by Maritime Commission symbol 69X5900.056 by any other government agency than the United States Maritime Commission of the sum of \$22,582,500?

The Witness: May I have the question read?

(Pending question read by the reporter.)

A. After it was deposited into the Construction Fund, United States Maritime Commission, Act of June 29, 1936, Revolving Fund, symbolized as 69X0200, nothing was done specifically with the \$22,582,500 beyond the fact that it became a part of funds available for use by the Maritime Commission itself for construction work.

Q. I haven't made myself clear, Mr. Maher. Isn't it a fact that in one form or another the United States Navy paid the United States Maritime Commission the sum of \$22,582,500?



(Deposition of John Bassette Maher.)

A. That is correct.

Q. To take care of the estimated costs of the conversion features of vessels known by Maritime Hulls 552 through 556, 558, 560, 562, 564, 567, 569, 571 through 573 and 565?

A. The Navy Department did reimburse the Maritime Commission to the extent of the money just mentioned by you and covering the hulls just mentioned by you.

Q. And am I correct in this: That the sum of \$22,582,500 was paid by the United States Navy to the United [134] States Maritime Commission, the latter in turn placing that on deposit in its United States Maritime Commission Working Fund, known by the symbol 69X5900.056?

A. No, sir. This document represents a request by the Maritime Commission for a transfer of funds from the Working Fund 69X5900.056 which had been previously made available for the use of the Maritime Commission by the Navy Department in a sum of money which included the \$22,582,500.

The actual transfer of \$22,582,500 represented a disbursement from 69X5900.056 and a deposit into 69X0200.

Q. Therefore, this \$22,582,500 does represent money secured from funds originally made available by the United States Navy to the United States Maritime Commission?      A. That is correct.

Q. I direct your attention to Plaintiff's Exhibit BB, more particularly to the enclosure attached thereto dated October 12, 1945. Under the heading

(Deposition of John Bassette Maher.)

that appears thereon "Permanente" I understood your testimony to be that the estimated cost for the conversion features of the vessels identified by United States Maritime Commission Hull numbers 557, 559, 561, 563, 566, 568 and 570 was a sum of money in connection with each of said vessels in the amount of \$4,601,000.

The Witness: Will you repeat the question, please?

(Pending question read by the reporter.)

Mr. Walkup: I object to the form of the question as to [135] what Mr. Pentz understood the witness' testimony to be. That is calling for a conclusion and opinion of the witness.

Mr. Pentz: Very well. I will reframe the question.

Q. (By Mr. Pentz): I direct your attention to the figure \$4,601,000 which appears at the bottom of the column entitled "Permanente," and ask you to state what that figure signifies.

A. That figure represents the total construction cost of the vessel at completion, including the conversion features stated in various elements of cost, and in an amount of \$1,661,500.

Q. So that the figure \$1,661,500 appearing in the same column opposite the words "Est. Conversion" is the estimated cost per vessel of the conversion costs of the vessels whose Maritime Commission numbers appear under the words "Richmond No. 3"?

A. Yes, sir.

(Deposition of John Bassette Maher.)

Q. What is the significance of the figure \$11,630,500 appearing in pencil notation in the third from the top horizontal line of pencil notations located on the bottom of the schedule attached to Plaintiff's Exhibit BB?

A. That represents the total cost of the conversion features of the 7 vessels whose Maritime Commission hull numbers are listed under the vertical column captioned "Richmond No. 3." [136]

Q. Now, I ask you whether or not the Maritime Commission received from the United States Navy the sum of \$11,630,500 as reimbursement for the cost of the conversion features of the vessels known by the Maritime Commission numbers appearing below the words "Richmond No. 3," on that schedule?

A. The Maritime Commission did receive from the Navy Department a sum of money which included the \$11,630,500 in an original working fund.

The Maritime Commission was later reimbursed to the extent of the \$11,630,500 through a transfer of funds from Working Fund symbol 69X5900.056 to appropriation symbol 69X0200 through the medium of the voucher attached to Plaintiff's Exhibit BB.

Q. And the reimbursement you have referred to in your last answer was a reimbursement from the United States Navy?

A. It was a reimbursement from a working fund made available to the Commission by the United States Navy.

(Deposition of John Bassette Maher.)

Mr. Pentz: Off the record.

(A discussion off the record was had.)

Q. By Mr. Pentz): Mr. Maher, I believe you testified that the grand total of the estimated conversion costs for vessels known by the Maritime Commission numbers 552 through 573 inclusive was approximately \$34,213,000; is that correct?

A. That is correct. [137]

Q. Is it or is it not a fact that in one form or another the United States Navy reimbursed the United States Maritime Commission for that \$34,213,000?

A. That is correct.

Q. Directing your attention to Plaintiff's Exhibit AA and to the schedule appearing attached thereto, and more particularly to the figure \$22,582,500 appearing at the bottom of the column marked "Permanente," will you tell me, if you please, how you arrived at that figure?

A. In the sense of the words "arrived at the figure," I did not arrive at it. The figure was furnished the Accounting Division by the Technical Division, upon the request of the Budget Officer and the Accounting Division, to the Technical Division for the information.

Q. Now, Mr. Maher, when in giving your last answer you referred to the Accounting Division you have reference, I take it, to the Accounting Division of the United States Maritime Commission?

A. I do.

Q. And when in that answer you referred to the



(Deposition of John Bassette Maher.)

Technical Division is it true that you had reference to the Technical Division of the United States Maritime Commission?      A. I do.

Q. And when you referred in that answer to the Budget Officer is it correct that you were referring to the Budget [138] Officer of the United States Maritime Commission?

A. I was, sir. May we go off the record a moment?

Mr. Pentz: Yes.

(A discussion was had off the record.)

Q. (By Mr. Pentz): I direct your attention, Mr. Maher, to the figure \$22,582,500 appearing beneath the word "Permanente," and opposite the words "Total Conversion Cost," appearing on the schedule attached to Plaintiff's Exhibit AA, and ask you whether or not you have in your custody any records or documents which would indicate how that total was arrived at?      A. I do not.

Q. Is there any other department or division of the United States Maritime Commission where you believe there may exist any papers or documents bearing upon how the total of \$22,582,500, that I referred to in my previous question, was arrived at?

A. Of my own knowledge I have never seen any such records.

Mr. Pentz: Will you repeat the question and I will ask the witness to answer it.

(Pending question was read by the reporter.)



(Deposition of John Bassette Maher.)

The Witness: I answered that to the effect that of my own knowledge I don't know. I have never seen any such records. [139]

Q. (By Mr. Pentz): I have not asked you to tell me what you know or don't know. The purport of my question is, is there any other department of the United States Maritime Commission where you believe there may exist any records bearing upon how the total of \$22,582,500 was arrived at?

A. I can still only state that any figure or any total must presumably have a breakdown. I don't know; I cannot say.

Q. Where is your best estimate of where that breakdown exists?

A. The total is furnished us by the Technical Division.

Q. Am I to understand the Technical Division of the United States Maritime Commission is your best estimate as to where such documents might be found?

A. If they were in existence, I would say yes.

Mr. Pentz: Will you read the question?

(Pending question read by the reporter.)

Mr. Walkup: He has answered it, hasn't he?

Mr. Pentz: No, he hasn't.

The Witness: What did I say?

(Thereupon, the last answer was read, as above recorded.)

Q. (By Mr. Pentz): In so far as your knowledge goes, such records may [140] exist in the Tech-

(Deposition of John Bassette Maher.)

nical Division of the United States Maritime Commission?      A. Yes.

Q. Can you furnish me with any other division of the United States Maritime Commission where you feel that such records might exist?

A. No, sir.

Q. Will you investigate and determine whether or not any such records do exist in the Technical Division of the United States Maritime Commission?

Mr. Walkup: I object to that. I think that is going a little too far to request this witness to undertake a personal investigation of the records of another division of the Commission.

Mr. Pentz: You may answer it, subject to Mr. Walkup's objection.

Mr. Walkup: I object to the question, although objections are reserved until the time of trial.

Mr. Maher has important duties to perform in his own department. His superiors have contacted me requesting that he be released from these proceedings to get back to his routine duties as soon as possible.

Mr. Pentz: You may answer the question subject to Mr. Walkup's objection. [141]

A. I cannot undertake an investigation of the records of another division unless I am directed to do so by the Director of my own division.

Q. (By Mr. Pentz): And what is his name?

A. Mr. Frank L. Lynch.

(Deposition of John Bassette Maher.)

Q. And his formal title in the United States Maritime Commission is what?

A. Chief, Accounting Division, Bureau of Accounts, United States Maritime Commission.

Mr. Pentz: Mr. Walkup, will you personally assist me in endeavoring to ascertain from the Technical Division of the United States Maritime Commission whether or not that division possesses any papers or records bearing upon how the figure \$22,582,500 appearing under the heading "Permanente" and opposite the words "Total Conversion Cost," as contained in the schedule attached to Plaintiff's Exhibit AA was arrived at?

Mr. Walkup: I am not certain that any such records exist, and within the limits of the time available to me I will make an effort to determine what is available in that regard.

Mr. Pentz: Off the record.

(A discussion off the record was had.)

Q. (By Mr. Pentz): State, if you will please, Mr. Maher, whether or [142] not your division ever kept any copies of the letters or correspondence or reports, whatever they were, upon which was based the figure \$22,582,500 which appears on the schedule attached to Plaintiff's Exhibit AA?

A. Beyond an exchange of memoranda originally requesting the information, and the reply in the form of the schedule which you have now questioned me about, our division did not maintain nor did they ever have any such records to maintain.

Q. Did you ever see any such records?

(Deposition of John Bassette Maher.)

A. Comprising the detail of the twenty-two million?

Q. That is correct.                      A. No, sir.

Q. Did you ever see a memorandum which contained the information derived from the records we are speaking about upon which you based the figure \$22,582,500?

A. I have never seen any breakdown beyond the general category of elements of cost as reflected in that schedule.

Q. Then who did actually prepare these figures?

A. The memorandum requesting the figures, as I have previously testified, was directed to the Director of the Technical Division. His reply simply gave us the breakdown with respect to general categories of expense, labor, material, overhead, profit, et cetera, aggregating the twenty-two million dollars. There were no figures presented to us which showed a [143] further breakdown within the general category.

Q. Now, Mr. Maher, I direct your attention to Plaintiff's Exhibit BB——

Mr. Walkup: I suggest this, that we still have some testimony to obtain from the Assistant Secretary. His deposition was continued for the production of some further information this morning. If that information is available now I suggest we adjourn this deposition and complete the Assistant Secretary's Deposition.

Then I will be in touch with the Technical Division this afternoon on some other matters, and I

(Deposition of John Bassette Maher.)

will see if this particular information is readily available.

Mr. Pentz: That is agreeable with me, and I therefore suggest that Mr. Labofish adjourn us to reconvene at 11 o'clock in the morning to complete the taking of Mr. Maher's deposition.

(Thereupon, at 3 o'clock p.m. the Notary Public adjourned the further taking of this deposition until 11 o'clock a.m., Friday, October 3, 1947.)

Friday, October 3, 1947

(The further taking of the deposition of the witness John Bassette Maher was resumed at 11 o'clock a.m., the parties present being Bruce Walkup, Attorney on behalf of the Plaintiff and Cross-Defendant, The Permanente [144] Metals Corporation, a corporation; Mr. Elliott H. Pentz, Attorney on behalf of the Defendants and Cross-Complainants, John Urquhart Birnie, an individual doing business as Birnie Electric Company, and Massachusetts Bonding and Insurance Company; The Notary Public, John O. Labofish; the Reporter, Mrs. Chloe S. MacReynolds; and the witness, John Bassette Maher.)

JOHN BASSETTE MAHER

a witness produced on behalf of the Plaintiff and Cross-Defendant, The Permanente Metals Corpora-



(Deposition of John Bassette Maher.)

tion, a corporation, having been previously sworn to state the truth, the whole truth, and nothing but the truth, testified further on his oath as follows:

The Notary Public: Mr. Maher, you are reminded that you are still under oath.

The Witness: Yes, sir.

Mr. Pentz: Let the record show that the taking of the deposition was reconvened and that I have no further questions at this time of Mr. Maher.

### Redirect Examination

By Mr. Walkup:

Q. Mr. Maher, yesterday afternoon you testified from the Maritime Commission's Completed Vessels report, and specifically from certain pages excerpted from that report designated as Plaintiff's Exhibit EE, and you testified in response [145] to questions by Mr. Pentz, concerning pages 17B, 18B and 19B of that report.

I ask you now with further reference to those documents if the name appearing under the column "Name" on each of the pages was necessarily known at the time that the contract was entered into; that is, the date of contract appears as 4-22-43 on page 18B, referring to Contract 15762; is it necessarily a fact that the names appearing under the "Name" column and the name of the operator appearing under the column "Operator" were known at that time?

A. Not necessarily, and in all probability they were not.

(Deposition of John Bassette Maher.)

Q. Is it not true that page 17B shows completed contracts?      A. That is true.

Q. And by that is meant the status as reflected at the time the vessels referred to on that page had been completed?

A. At the time the report was published each vessel reflected on that page had been completed.

Q. Referring to page 18B, and particularly to the column entitled "Percentage of Completion Total," what is the significance of the item 100?

A. The item 100 is a percentage figure indicating the vessels at the time of the issuance of that report were 100 per cent complete with respect to Maritime Commission's [146] specifications.

Q. And would that be true of the same column on page 19B, the percentage of completion total and the designation 100 thereunder?

A. That is the same situation.

Q. Was it the custom of the Commission to have periodic progress reports during the course of construction showing the percentage of completion at various dates?

A. It was, and is currently customary.

Q. I hand you herewith a sheet, which is a photostatic copy of two pages bearing the heading "Report No. 72," sheet 1 being labeled as "Sheet No. 89," and sheet 2 being labeled as "Sheet No. 90." Would you please identify those two sheets?

A. This is an excerpt from a regularly published report of the Maritime Commission which is published on a monthly basis, and it shows by contract,

(Deposition of John Bassette Maher.)

hull number, and shipbuilder, and type of vessel, all of the vessels under contract as of the date of the publication of the specific report.

It shows the total percentage of completion as at the date of publication and the gain for the month elapsing between the current and the prior publication.

Mr. Walkup: Mr. Pentz, referring to our conversation this morning with reference to this document, am I correct in stating that you have agreed you will make no objection to this document on the ground that it is not a certified copy [147] of an original record?

Mr. Pentz: Off the record.

(A discussion off the record was had.)

Mr. Pentz: That is true; I will make no such objection.

Mr. Walkup: May I have this document, consisting of two sheets, marked for identification as Plaintiff's Exhibit GG?

(Photostatic copy (two sheets) entitled "Report No. 72, Sheets No. 89 and 90," was marked Plaintiff's Exhibit GG for Identification.)

Q. (By Mr. Walkup): Is the document, of which the exhibit is a copy, an official record of the Maritime Commission? A. It is.

Mr. Walkup: I have ascertained from the office where this was obtained, Mr. Pentz, that the date of the report, of which this is an excerpt, is Janu-

(Deposition of John Bassette Maher.)

ary 1, 1944, and subject to your right to check that and correct that information, if it is wrong, are you willing to stipulate that it is from Report No. 72 of date January 1, 1944?

Mr. Pentz: I so stipulate.

Q. (By Mr. Walkup): Can you by referring to this progress report, No. 72, illustrate your explanation of the fact that the name appearing on pages 17B, 18B and 19B of Plaintiff's Exhibit EE, under the column headed "Name" does not necessarily indicate [148] that the name had been assigned on the contract date, as shown in the column for "Contract Date" on pages 17B, 18B and 19B?

A. No names had been assigned at the date of the issuance of this report.

Q. Referring to Report No. 72?

A. Referring to Report No. 72, dated January 1, 1944.

Mr. Walkup: I offer this document now marked as Plaintiff's Exhibit GG for Identification, consisting of two pages, in evidence as Plaintiff's Exhibit GG.

(The document heretofore marked Plaintiff's Exhibit GG for Identification was offered in evidence as Plaintiff's Exhibit GG.)

Mr. Walkup: I have no further questions on redirect examination.

Mr. Pentz: I have some questions.

(Deposition of John Bassette Maher.)

Recross-Examination

By Mr. Pentz:

Q. Directing your attention to page 18B of Plaintiff's Exhibit EE, and to the vertical column entitled "Name," and directing your attention to the list of names starting with the name "Sarasota" and continuing through and including the name "Bingham," do you or do you not have any actual, personal knowledge as to when those names were assigned to the vessels? A. I do not.

Q. Actually those names were assigned to those vessels by the United States Navy. Is that not true? [149]

A. I cannot answer the question.

Q. Do you know who assigned those names to those vessels?

A. Mr. Pentz, the reason I said I cannot answer the question, names were assigned to the vessels by the Maritime Commission. The agreement with the Navy Department vested the right in the Navy to change the name to one of its own selection.

There are records in the Maritime Commission which will show the former and the new name. I am not prepared to state which one this name is.

Q. In so far as this record goes, namely, page 18B of Plaintiff's Exhibit EE, can it or can it not be ascertained when those names were assigned to those vessels? A. It can be ascertained.

Q. In what manner, please?

Mr. Walkup: Off the record.



(Deposition of John Bassette Maher.)

(A discussion off the record was had.)

The Witness: Will you read the question?

(The pending question was read by the reporter.)

The Witness: It can be ascertained.

Q. (By Mr. Pentz): Please explain to me how from this record you can ascertain that?

A. From this record, this particular exhibit, it cannot [150] be ascertained.

Mr. Walkup: Then your answer to his previous question should be that it cannot——

Mr. Pentz: Just a minute; he is doing the testifying, Mr. Walkup. You are acting as his attorney and not as the witness.

Mr. Walkup: I am not acting as his attorney.

Mr. Pentz: You are at least not the witness.

Mr. Walkup: That is correct.

Mr. Pentz: Very well. I will ask you not to testify for him.

Mr. Walkup: I did not intend to testify.

Q. (By Mr. Pentz): Let's get one thing clear: Am I correct in understading that you cannot from this record, namely page 18B of Plaintiff's Exhibit EE, determine when the names were assigned to those vessels?

Mr. Walkup: Off the record.

(A discussion off the record was had.)

Mr. Walkup: Will you read the question, please?

(Deposition of John Bassette Maher.)

(Thereupon, the question was read, as follows:)

“Question: Please explain to me how from this record you can ascertain that?”

The Witness: Considering this record as the specific exhibit, you cannot. [151]

Q. (By Mr. Pentz): Now, I direct your attention to Plaintiff's Exhibit GG, and ask you whether or not you are able by the examination of that record to determine when the names appearing on page No. 18B in Plaintiff's Exhibit EE, starting with the name “Sarasota” and continuing through and including the name “Bingham” were assigned to the vessels?

The Witness: Will you read the question, please?

(The pending question was read by the reporter.)

The Witness: No, sir.

Mr. Pentz: No further questions.

Mr. Walkup: No further questions. May the record show the Notary Public excuses the witness from any further testimony?

The Notary Public: Have both of you gentlemen concluded?

Mr. Pentz: Yes, sir.

Mr. Walkup: Yes, sir.

Mr. Pentz: One last thing: Did I ask you whether or not the deposits in those funds were deposited in the United States Treasury?

(Deposition of John Bassette Maher.)

The Witness: I do not believe you asked me that question specifically.

Mr. Pentz: Then I do want to ask that question.

Q. (By Mr. Pentz): Referring your attention to Construction Fund, U. S. [152] Maritime Commission, Act of June 29, 1936, Revolving Fund, known by the United States Maritime Commission designation 69X0200, is it not a fact that moneys deposited in that account are actually deposited in the United States Treasury? A. That is correct.

Q. Is that likewise true with regard to the account known as United States Maritime Commission Working Fund identified by United States Maritime Commission symbol 69X5900.056?

A. That is correct.

Mr. Pentz: No further questions.

Mr. Walkup: May the record show that the Notary excuses Mr. Maher from further testimony, his examination having been completed, and will the Notary please continue the deposition until 2 o'clock this afternoon for another witness, being one of the witnesses designated by the Chairman of the Maritime Commission to testify on his behalf?

The Notary Public: Very well; it is so ordered. This witness is excused sine die.

This hearing will resume at 2 o'clock p.m., at which time another witness will testify.

Mr. Walkup: Before we adjourn, Mr. Notary, I would like to state for the record yesterday afternoon and this morning I have made a serious and sincere effort to locate certain records requested by

Mr. Pentz yesterday, and which he asked me if I would undertake to cooperate with him to produce and [153] that the results of my search have been that such records if they exist at all are in storage in Maritime Commission warehouses, and if they can be located with the presently existing manpower shortages in the Commission, the location may consume some three or four days to two or three weeks, and that I have reported this information back at this time.

Mr. Pentz: May the record also show that the time consumed in having progressed this far is approximately two weeks; that business matters not only of my own but those of Mr. Walkup are such that we feel in the circumstances we will not pursue the matter further.

Mr. Walkup: I would like to correct that statement only to this extent: The decision is up to you as to whether or not you desire to pursue the matter further, Mr. Pentz. The documents were not requested by me in the first place, and I merely offered my assistance in attempting to comply with your request, that I cooperate to see if they were readily available.

Mr. Pentz: Very well.

(Thereupon, at 11:45 o'clock a.m., the further taking of the depositions was adjourned to reconvene in Room 4705, Department of Commerce, at 2 o'clock p.m., on October 3, 1947.)

/s/ JOHN BASSETTE MAHER.

District of Columbia,  
City of Washington—ss.

I, John P. Labofish, a Notary Public within and for the District of Columbia, do hereby certify:

That prior to being examined the witness whose signature is affixed to the foregoing deposition was sworn by me to testify the truth, the whole truth and nothing but the truth;

That said deposition was taken down by Chloe S. MacReynolds, an official court reporter of the District Court of the United States for the District of Columbia, in shorthand, at the time and place therein stated and was thereafter reduced to typewriting under her direction;

That Chloe S. MacReynolds, the Reporter, is a disinterested party to the cause;

That when reduced to typewriting the deposition was read by or to the said witness, who was duly informed by me of the right to make such corrections as might be necessary to render the same true and correct, and the same was thereupon signed by the said witness in my presence.

I further certify that I am not of counsel or attorney for either of the parties hereto or in any way interested in the event of this cause, and that I am not related to either of the parties thereto.

Witness my hand and seal this 6th day of November, 1947.

[Seal]      /s/ JOHN P. LABOFISH,

Notary Public Within and for  
the District of Columbia.

My commission expires Dec. 14, 1947. [154-A]



[Title of District Court and Cause.]

DEPOSITION OF IVAN JOYCE WANLESS

Appearances:

BRUCE WALKUP,

On behalf of Bruce Walkup; Willis S. Slusser; Thelen, Marrin, Johnson & Bridges, Attorneys for Plaintiff and Cross-Defendant, The Permanente Metals Corporation, a corporation. [155]

ELLIOTT H. PENTZ,

On behalf of Hill, Morgan & Farrer; Tinning & DeLap; Mellin and Hanscom, Attorneys for Defendants and Cross-Complainants, John Urquhart Birnie, an individual doing business as Birnie Electric Company, and Massachusetts Bonding and Insurance Company, a corporation.

Deposition of Ivan Joyce Wanless, taken on behalf of the plaintiff and cross-defendant, The Permanente Metals Corporation, a corporation. in Room 4809 Department of Commerce, in Washington, D. C., at 2:00 o'clock p.m., on the 3rd day of October, 1947, before John P. Labofish, a Notary Public within and for the District of Columbia, pursuant to the annexed stipulation.

(The further taking of the depositions was resumed on October 3, 1947, at 2:00 o'clock p.m., pursuant to the adjournment taken.)

IVAN JOYCE WANLESS

a witness produced on behalf of the plaintiff and cross-defendant, The Permanente Metals Corporation, a corporation, being first duly sworn to state the truth, the whole truth, and nothing but the truth, testified on his oath as follows:

Direct Examination

By Mr. Walkup:

Q. Will you state your name?

A. Ivan Joyce Wanless.

Q. Where do you reside? [156]

A. 15 Poe Road, Bethesda, Maryland.

Q. By whom are you employed?

A. United States Maritime Commission.

Q. In what capacity?

A. Chief of the Preliminary Design Branch of the Technical Bureau.

Q. How long have you been employed by the United States Maritime Commission?

A. Since March 13, 1938.

Q. Are you a graduate of any university?

A. University of Michigan with the degree of Bachelor of Science; Naval Architect and Marine Engineering.

Q. In what year?           A. 1930.

Q. Since graduation and the obtaining of the degree just mentioned have you had any practical experience in connection with ship design?

A. Yes, both before and after graduation.

Q. To what extent, please?

(Testimony of Ivan Joyce Wanless.)

A. Since graduation I have been continuously employed in the design departments of the New York Shipbuilding Corporation from August 1, 1930, roughly, to July 1, 1935; as an assistant in the Preliminary Design Section of the United States Navy from July 1, 1935, to the date of March 13, 1938.

Q. Since being with the United States Maritime Commission what position have you held? [157]

A. I came over here as an assistant in the then Hull Section; started immediately on design work as an assistant; then was given charge of design directly under the Director of the then Technical Division, reporting to the Commission directly as desired, until my present branch was organized.

Q. Are you the author of any publications relating to ship design?

A. May I just clarify that question? You mean text books or things of that nature, or do you mean technical papers?

Q. Technical papers or other articles relating to ship design which have been published?

A. I have written a number, and I presented two papers in collaboration with Mr. Bates to the Society of Naval Architects, Marine Engineers, one being entitled "Subdivision of Maritime Commission Vessels," and the other entitled "Aspects of Large Passenger Vessel Design."

Q. Are you a licensed naval architect?

A. Being a Government employee I do not hold

(Testimony of Ivan Joyce Wanless.)

an engineer's license but I am qualified to obtain the same any time I wish.

Q. Will you state, please, the duties of your position as you have testified you hold at the present time?

A. I am basically in charge of the planning of the Maritime Commission's programs for construction; of determining [158] the characteristics of the vessels required for the various trade routes or services required by the American shipping industry, interpreting those characteristics into specific designs as to length, beam, draft, cargo capacity and other features which are a prerequisite for the final development of the design to permit building and construction.

Mr. Pentz: May I have the answer read back, please?

(Thereupon, the answer of the witness was read as follows:

"I am basically in charge of the planning of the Maritime Commission's programs for construction, of determining the characteristics of the vessels for the various trade routes or services required by the American shipping industry, interpreting those characteristics into specific designs as to length, beam, draft, cargo capacity and other features which are a prerequisite for the final development of the design to permit building and construction.")

Q. (By Mr. Walkup): Do your duties include

(Testimony of Ivan Joyce Wanless.)

any function with reference to the designation of Maritime Commission vessels by numerical or letter symbols?      A. Yes, they do.

Q. To what extent? [159]

A. We originate all designations. May I just, to simplify it, make a statement off the record?

Mr. Walkup: I think it is better if we stay on the record. I think our delays up to now have been because we have gone off the record.

The Witness: May I put it this way? In preparing a design we give it in my own branch a designation, which is only for filing purposes within our own group because all work originates there and is of interest to nobody else until we are ready for it to go outside.

As soon as a design appears as though it is going to be utilized we then give it a design number, or letter, rather, with a prefixing symbol as to the type, such as cargo, passenger, coastwise or tanker, and in between is inserted the letter "X" meaning the thing is still in the experimental stage.

Then when the design becomes crystallized and we know definitely the type of propulsion, and the length, and so forth, the final designation is given which would take the form of, like the bids just opened today, C3, S1, DN1.

Q. Do the designations such as you have given by way of illustration officially originate in your section?      A. Yes, sir.

Q. And during the past several years have you



(Testimony of Ivan Joyce Wanless.)

been in charge of the work of making and giving such designations? [160]

A. We wrote up the original memorandum which was approved by the Commission as its official designation and have had charge of assigning such designations ever since.

Q. Does your work in your official capacity include the actual designing of vessels for the Maritime Commission? A. Yes, sir.

Q. Have you personally participated in the designing of a number of the Maritime Commission vessels now in use?

A. All of them, including the original C2's.

Q. As to what vessels have you personally participated in the design?

A. I believe there are approximately about 140 different types that have been designed. Many have been constructed of each type, and many of many of the types, in all together around 5,000-some ships are involved.

Q. That is with all the various ramifications and changes.

A. Yes, sir. And through our specific Design Section I believe we have at least 140 designs that have originated and been carried through by myself and my staff.

Q. Do you have any knowledge from personal participation in the design of the AP class of vessel for the Commission? A. The Victory ship?

Q. Yes. A. Yes. [161]

Q. To what extent? A. Complete.

(Testimony of Ivan Joyce Wanless.)

Q. What was your first connection with the AP series of vessels?

A. In the summer of 1942 when submarine losses were still running fairly high, it became apparent that it might be advisable to consider entering into construction of a higher speed vessel to overcome the submarine menace.

To go back to the beginning, in 1939-1940 when the British construction was started here and then the President initiated the Liberty Ship program which was basically an extension of the British ship program, it was evident the machine capacity of the country was not capable of producing geared turbine machinery in sufficient quantity. For that reason the Liberty ship with reciprocating engine was designed because there were a number of machine shops which could make such an engine.

In the middle of 1942 Admiral Vickery was advised by several manufacturers that they could undertake the machining of larger and more powerful engines, which was the thought in back of the Victory ship, and in August of 1942 I received a note saying that he would like to have that design developed, and the first design was developed using this reciprocating engine of the Lenz type of approximately 5,600 IHP.

Shortly after that the War Production Board informed us that some turbine and gear facilities could be made [162] available and coordination was made through the various manufacturers, principally Westinghouse, GE and Joshua Hendy to

(Testimony of Ivan Joyce Wanless.)

produce units of the type employed in the C2 and C3 cargo vessels.

Q. Did you personally prepare the original AP or Victory ship design for the Commission?

A. Yes, sir. I might add there was a variation of the Victory ship design for Diesel engines but only one was ever produced. The reciprocating engine failed on test block so no ship was ever built of the original design concept.

Q. I call your attention to the Maritime Commission designation VC2-S-AP2. Are you familiar with the meaning of that designation?

A. Yes, sir.

Q. Will you please state the meaning of the designation?

A. I would like to trace the origin of that. In August of 1942 I was given a directive to prepare a 15 knot cargo ship design with the same characteristics as the Liberty ship so far as cargo, deadweight and cubic were concerned. That, according to our system of designation, became -AP. During the interim stage it was designated as C-X-AP. When we had finally settled on dimensions it finally became C2-S-AP1, which was the designation for the original reciprocating design.

The AP2 later became the same type with C2 type [163] machinery.

The AP3 was the same ship with the C3 type machinery.

Q. Pardon me for interrupting, Mr. Wanless, so that at the time of trial there will not be objec-

(Testimony of Ivan Joyce Wanless.)

tion that your testimony is not responsive to any question, it is necessary that I ask specific questions and you answer those questions specifically and then you are permitted to explain your answer.

Now, my present question, merely so that we will have a proper record for court, is for you to state the meaning of the symbol VC2-S-AP2. After having stated that you are at liberty to explain it.

A. The "V" stands for the Victory ship, as it was known, corresponding to the "E" which was the emergency ship, or the Liberty type as it became known.

The "C" stands for cargo vessel.

The "2" means a cargo vessel between 400 and 450 feet long.

The "S" means it is of steam propulsion; that is, geared turbines.

The "AP" is a design designation as it falls into the Commission schedule, and the 1, 2, 3 or 4 as follows is the variation from the standard design.

Q. Referring, then, to the letters "AP" appearing just before the numeral 1, 2, 3, 4 or 5, as the case may be, how was the designation "AP" developed by the Commission? [164]

A. Because it was the design that was started after AO; well, it goes AA; AB; AC and all the way through the alphabet. As each design comes along we give it a number. We started out with "A" originally and went on through the first alphabet and then the second, and we are now up to the "D" design which I previously referred to.



(Testimony of Ivan Joyce Wanless.)

Q. Does the "AP" as used by the Maritime Commission have any connection whatsoever with the "AP" as that letter may be used by the Navy Department in designating certain vessels as either "APA" or "AKA"?

Mr. Penz: Just a minute. I am going to make a technical objection to the question as follows:

I object to the form of the question in that it calls for a conclusion of the witness concerning matters pertaining to the United States Navy on which he has not been qualified as an expert to render an opinion.

Mr. Walkup: I will withdraw the present question.

Q. (By Mr. Walkup): I will ask you if in determining the symbol "AP2" the Commission acted entirely independently? A. Yes.

Mr. Pentz: Will that answer be stricken to give me a chance to object? Will you stipulate that it may be?

Mr. Walkup: Yes.

Mr. Pentz: May I hear the question read back? [165]

(Thereupon, the question was read by the reporter as follows:

"I will ask you if in determining the symbol 'AP2' the Commission acted entirely independently?")

Mr. Pentz: I object to the form of the question as calling for a conclusion of the witness.



(Testimony of Ivan Joyce Wanless.)

Mr. Walkup: You may answer the question.

A. I explained that the "AP," when the design was proposed, was merely in the next series of letters in our usual scheduling of designs, and was solely the Commission's business and no one else's. In fact, it has caused a great deal of confusion by the way we did the thing.

Q. (By Mr. Walkup): Do the letters "AP" as used by the Commission in the symbol VC2-S-AP2 have any connotation so far as the Commission is concerned with the terms "attack cargo"?

A. No, sir.

Mr. Pentz: Wait a minute; your answers are a little quick there. I would like to have the question read back, please. May it be stipulated that the answer is stricken?

Mr. Walkup: Yes.

(Thereupon, the question was read by the reporter, as follows:

"Do the letters 'AP' as used by the Commission in the symbol VC2-S-AP2 have any connotation so far [166] as the Commission is concerned with the terms "attack-cargo?"")

Mr. Pentz: I object to the question as calling for a conclusion of the witness.

Mr. Walkup: You may answer that.

A. The designation "AP" has no connection whatsoever with any Navy designation such as "Attack Cargo."

Q. (By Mr. Walkup): Does the designation

(Testimony of Ivan Joyce Wanless.)

"AP," as used by the Maritime Commission, have any connotation in the Commission as "Attack Personnel"?

Mr. Pentz: I object to the question as calling for a conclusion of the witness and on the further ground he is testifying concerning things on which he has not been properly qualified as an expert.

Mr. Walkup: Well, on that point he is the man who makes up the symbols for the Commission.

Mr. Pentz: Let's not argue about it. You just ask your questions.

Mr. Walkup: Will you answer the question, please?

A. It does not.

Q. (By Mr. Walkup): Does the designation "AP" as used by the Commission in its symbol VC2-S-AP2 refer to auxiliary transport?

Mr. Pentz: May I have that question [167] read?

(Thereupon, the question was read by the reporter as follows:

"Does the designation 'AP' as used by the Commission in its symbol VC2-S-AP2 refer to auxiliary transport?")

Mr. Pentz: I object to the question as being leading.

Mr. Walkup: You may answer.

A. Neither letter in the designation has any meaning in itself.

Q. (By Mr. Walkup): For purposes of clarification, I now hand you a document consisting of

(Testimony of Ivan Joyce Wanless.)

four pages dated October 1, 1947, and ask you please to identify that for the record.

A. This document was prepared by my office as of this date from a request received last week from Commissioner Carson for clarification of the various design letters of the Commission.

Q. When you say "this date" you are referring to the date appearing on the document?

A. I am referring to the date appearing on the document.

Q. October 1, 1947?

A. Correct. These design letters were assigned starting back in about 1939 as we started the various designs as listed here. [168]

After finishing the first alphabet, and as can be seen here——

Q. On page 2, in the column entitled "Design Letter"?

A. Yes. The "AP" design came after the "AM"; "AN"; "AO"; and "AP."

The AO was not used in order to avoid confusion with Navy designations.

Q. Referring further to the document that you have just identified, is this document an official record of the Maritime Commission? A. It is.

Q. And was it prepared by you in the official course of your duties for the United States Maritime Commission? A. It was.

Q. And is the original of this document on file in the "Preliminary Design Branch of the United States Maritime Commission"? A. It is.

(Testimony of Ivan Joyce Wanless.)

Q. And has this document, of which this is a copy, been circulated to various other branches of the Commission as an official publication to be used by other branches of the Commission?

A. It has.

Mr. Walkup: Will you kindly mark this for identification as Plaintiff's Exhibit HH? [169]

(Certified copy of four-page document entitled "Design Filing System" was marked Plaintiff's Exhibit HH for identification.)

Q. (By Mr. Walkup): Referring further to Plaintiff's Exhibit HH for identification, does the symbol VC2-S-AP appear in the exhibit?

A. It does.

Q. Will you point it out?

(The witness complies with counsel's request.)

Q. You are now designating page 2 of the exhibit?

A. That is right; AP1 to 7, meaning 7 in the AP design, Victory cargo.

Q. Then does the AP1-7 indicate you have symbols VC2-S-AP1, VC2-S-AP2, VC2-S-AP3, et cetera, to and including VC2-S-AP7?

A. It does, although not all have been built. AP1 was not built, as previously explained.

Q. Opposite that symbol on page 2, to the left, appears the words "Victory cargo ship." What is the significance of that wording appearing under the heading "Description"?

A. The original description was a cargo ship and

(Testimony of Ivan Joyce Wanless.)

because it was going into quantity production as part of the emergency program they did not want to let it stand as a straight C2. They did not want to call it an emergency ship and confuse it with a Liberty type which was EC2, so the [170] Victory was suggested and that is why it became the VC2.

Q. When you refer to that are you referring to your differences in determining these symbols?

A. The description of the Victory and the acceptance of it came from the Commission itself.

Q. Through your section? A. Yes.

Q. Which in turn prepared the official designation?

A. Yes. We prepare everything except such as prefixes as VC2 or EC2. There is a standard nomenclature: "B" means barges where "C" means cargo. "N" means coaster; "V" means tug, and so forth.

Q. You have explained the meaning of the symbol VC2-S-AP2. Will you now please explain the meaning of the symbol VC2-S-AP3?

A. That is the same vessel with the C2 type machinery with 6,000 SHP type geared turbine, whereas the C3 type is 8,500 SHP type geared turbine.

Q. Do the other letters and numbers of the designation mean the same as in the case of the VC2-S-AP2? A. Yes, sir.

Q. Would you please explain the meaning of the designation VC2-S-AP5?

A. That comprised two types of vessels. Both



(Testimony of Ivan Joyce Wanless.)

the AP2 and AP3 types were modified to meet Navy requirements. [171]

Q. Would you state, please, the meaning of the entire symbol VC2-S-AP5?

A. Victory cargo ship, between 400 and 450 feet long, steam turbine design, AP 5th modification.

Q. Do you know the dates when these various designations were first officially used?

A. I made a note of that.

Q. Can you tell us by referring to your notes?

A. The AP designation was given September 22, 1942.

The AP2 designation was assigned on February 19, 1943, which is when we had intimation that the C2 machinery would be available.

The AP3 was assigned on March 4th of the same year when we were informed C3 machinery would be available.

Q. That is, March 4, 1943, was the first use of the designation AP3?

A. That is right. AP4 was assigned at the same time as AP2, which was February 19, 1943.

The reason for holding up on the designation of AP3 was that we had intimation, but not knowledge, that we could get the C3 machinery, and so the number was reserved to make AP2 mean C2 machinery and AP3 mean C3 machinery.

Q. What date was the symbol VC2-S-AP5 designated?

A. It was officially designated November 1, 1943.

Mr. Pentz: May I interrupt there a minute? I

(Testimony of Ivan Joyce Wanless.)

would [172] like to have the answer that Mr. Wanless has given to the date of adoption of VC2-S-AP2.

The Witness: February 19, 1943.

Q. (By Mr. Walkup): Are the various AP type vessels sometimes referred to by the Commission merely by the use of the last designation, that is, as AP2, AP3 or AP5, rather than the use of the entire symbol VC2-S-AP2, AP3 and AP5?

A. That is a common practice through the whole Technical Branch and most of the other branches dealing with the ships themselves.

Q. So the Maritime Commission's use of the term AP2 would refer to the full designation VC2-S-AP2 and accordingly the same as to the AP3 and AP5?

A. That is correct.

Q. By whom were the designs for the AP series of vessels prepared?

A. By me and my staff.

Q. That is by the United States Maritime Commission?

A. That is correct.

Q. Would you state, please, the mechanics of the actual preparation of the designs, that is, in outline form?

A. In my capacity of Preliminary Design we made such studies governing the varying dimensions, et cetera, to meet the requested characteristics. Those studies included [173] subdivision studies; weight estimates; basic structural sections and lines, together with estimates of power and speed.

(Testimony of Ivan Joyce Wanless.)

After some 25 or 30 studies an answer was reached which I recommended to Commissioner Vickery for acceptance and the same was accepted for development.

At that stage several of the Specialty Sections within the Commission made their comments, and the Engineering Section during that stage also developed the expected heat balance and tentative machinery layout. These plans were then given to George C. Sharp, who was retained by the Maritime Commission for the preparation of the contract drawings, specifications, and subsequent working drawings that were distributed to the various shipyards for the construction of the vessels.

Q. Could you identify Mr. Sharp further?

A. Mr. Sharp is a Naval Architect and Marine Engineer, who has offices at 30 Church Street, New York City. He is internationally known.

Q. He was employed by the Maritime Commission for the purpose of doing certain work in completing the designs for the AP series of vessels, was he?

Mr. Pentz: I object to the form of the question as leading the witness and also for calling for his conclusion on matters which he has not been qualified as an expert.

Mr. Walkup: I will reframe the question. [174]

Q. (By Mr. Walkup): In the Preliminary Design Section, Mr. Wanless, state the extent of your familiarity with Maritime Commission designs from the inception thereof to and including the comple-

(Testimony of Ivan Joyce Wanless.)

tion of the final working drawings, plans and specifications.

A. After completing the preliminary design we follow very closely certain phases of the same throughout the preparation of the contract plans, whether the same is done within the Commission or without, particularly regarding lines, subdivision and all matters affecting weights. This requires constant touch with whoever does the work, whether it is done by ourselves or by an agent.

Furthermore, we frequently check the work in the shipyard as well as approve within our section the vital key plans affecting the design and have final approval on the completed vessel as to subdivision, capacity, stability, both intact and damaged, which covers the inclining experiment and determination of center of gravity.

Q. In the performance of those duties of your office in connection with the AP5 vessels did you or did you not follow the work done by Mr. Sharp, as Naval Architect?      A. Yes.

Q. And did you on behalf of the Commission periodically contact or keep in touch with Mr. Sharp's office as to the [175] progress of the work being done by him in completing the designs?

A. Not as to progress, but continuous touch as to the matters affecting the design in total and in detail.

Mr. Pentz: May I have the answer read?

(Thereupon, the answer was read as follows:



(Testimony of Ivan Joyce Wanless.)

“Not as to progress, but continuous touch as to the matters affecting the design in total and in detail.”)

Q. (By Mr. Walkup): Who had the final responsibility as between the Maritime Commission and Mr. Sharp for the AP design?

A. The Commission always holds the responsibility. Mr. Sharp did the work for us subject to detailed approval by the Technical Staff of the Commission.

Q. Will you explain further what you mean by “subject to detailed approval by the Technical Staff of the Commission”?

A. Each plan as prepared by Mr. Sharp was individually reviewed and approved by some member of the staff of the Commission, and the Commission maintained an office at 30 Church Street to facilitate and expedite this work.

Q. After the Commission did approve each separate plan, was such approval noted upon the drawings?

A. It was noted upon all drawings.

Q. And have copies of those drawings been furnished [176] to your office?

A. The copies are on file with the Commission.

Q. Is that the procedure which was followed in the case of design represented by symbol VC2-S-AP5?

A. That as well as all other designs.

Q. So that the procedure you have now described would be the procedure followed by the Commission in preparing the design for all of the AP type vessels?

A. That is correct.



(Deposition of Ivan Joyce Wanless.)

Q. And are you personally familiar with that procedure? A. Yes, sir.

Q. Could you state briefly the basic differences between AP2 and AP5?

A. The AP2 was converted for Navy use. There was some change in armament, change in wattage, and the accommodations were increased to take care of Navy personnel. The subdivision was slightly modified to provide greater safety, but in such manner that it could be taken out.

The modifications were all made and kept to a minimum so as not to destroy the value of the vessel for its rehabilitation to a cargo vessel when the Navy had finished with its use.

Q. Who designed the conversion features of the AP5?

Mr. Pentz: Excuse me; I believe the last question was the difference between the AP2 and AP5, wasn't it? I [177] understood that to be the question.

Mr. Walkup: I withdraw the present question.

Q. (By Mr. Walkup): I will ask you, isn't it true that the AP5 is essentially an AP2 with certain conversion features? A. Yes, sir.

Q. Who designed the conversion features which distinguish the AP5 from the AP2?

A. I did in collaboration with other sections of the Technical Bureau. Seeing that the conversion features were what are normally termed as minor and not affecting the basic design, the details of each regarding electrical, mechanical arrangements

(Deposition of Ivan Joyce Wanless.)

were handled by the Design Development Sections, but we were intimate and familiar with all those because of the necessity of maintaining a check on weight and stability.

Q. When you say "we," are you referring to the United States Maritime Commission?

A. No, the Preliminary Design Branch.

Q. So that the design of the conversion features which distinguishes the AP5 from the AP2 was a design made by the Maritime Commission?

A. Yes, sir. The Navy Department requested a certain type of conversion to which the Commission could not agree, and the final result was the compromise to permit future restoration. [178]

Q. Will you please elaborate or explain further your reference in your last answer to "future restoration"?

A. These vessels were designed as cargo vessels and for a great deal of use on a number of trade routes throughout the world. Since the war has been over there are applications for purchase; all vessels have actually been sold out of the two groups AP2 and AP3 to the extent of about 120 and there are about another 30 or 40 particularly foreign interests interested in acquiring considerable of these vessels of all three types, AP2, AP3 and AP5.

Q. By the term "future restoration," then, did you refer to the possibility existing at the time that the AP5's were built that they might later be restored to cargo vessels?

A. They are now in progress.

(Deposition of Ivan Joyce Wanless.)

Q. That is, some of them are?

A. Some of them. On all classes it was necessary to remove military features, such as the guns and degaussing, Navy gunner quarters, and things of that nature to return them to their original design, peace-time status. That applies to all merchant vessels of the United States which were used during the war.

Q. Does it apply to the AP2, AP3 and AP5 series? A. Yes, sir.

Q. Mr. Wanless, are you familiar with the degaussing system of the AP2 and the AP5? [179]

A. I am familiar with degaussing insofar as the same is generally installed affecting the arrangement, et cetera.

The detail and principles of degaussing I am not qualified to speak on, such as the number of coils and the amount of flux and current, but insofar as degaussing and its effect on installation and the way it is installed on the ship, I am.

Q. Did the degaussing system on the AP5 classification differ from the degaussing system on the AP2 classification?

Mr. Pentz: I will object to that question on the ground that there has been no showing that an AP2 classification ship had degaussing apparatus.

Mr. Walkup: I will ask the preliminary question then to meet the objection.

Q. (By Mr. Walkup): Did the AP2 classification have a degaussing system?

A. All vessels constructed after 1941 had in their

(Deposition of Ivan Joyce Wanless.)

contracts provision for the installation of degaussing when required by the Navy, and all vessels which were completed after December 7, 1941, had degaussing installed.

The AP2 specification called for a degaussing system to be installed as a change under the contract, if so ordered, and it was so ordered on all vessels.

Q. Was the degaussing system on the AP5 different from the degaussing system on the AP2? [180]

A. The specifications called for the degaussing in the AP5 contract. The installation was not materially different.

Q. And on the AP2 class of vessels was there a voice tube installation?

A. All cargo vessels normally have voice tubes installed for direct communication between certain vital centers such as housetop to wheelhouse and others.

Q. Was that true in the case of AP2 design?

A. Yes.

Q. And was the voice tube equipment on the AP5 different from the voice tube equipment on the AP2?

A. Several were eliminated from the AP5 design and others were added, but the over-all installation is about the same. It depended upon the rearrangement of the space.

Q. When you say that several were eliminated, are you referring to several of the voice tubes?

(Deposition of Ivan Joyce Wanless.)

A. Yes, sir, and several were added, so that it balances out about the same.

Q. In other words, would it be correct to say that the total amount of voice tube installation in the AP5 would be substantially the same as the total amount of voice tube installation on the AP2, except that the location and arrangement of the voice tubes might be different?

A. Yes. You can refer to the specifications of the two [181] vessels for clarification.

Q. Did the AP2 classification have a mechanical telegraph? A. Yes, sir.

Q. Did the AP5 classification have a mechanical telegraph? A. Yes, sir.

Q. Were the mechanical telegraph arrangements on the AP2 the same or different from the mechanical telegraph arrangements on the AP5?

A. The AP2 had a straight commercial type telegraph which was used on the AP5 with one additional indicator, and the other change was in the engraving on the dials, which was changed from commercial standard to Navy standard terms, after much heated argument.

Q. Did the AP2 series have a radar installation?

A. No.

Q. Did the AP5 series?

A. Yes. The Navy supplied a radar installation which was installed by the contractor.

Q. Did the AP2 series have a system of mechanical wireways?

A. All vessels have metal protection or wire-



(Deposition of Ivan Joyce Wanless.)

ways, but the AP5 did have a greater amount than the AP2.

Q. The AP2 and the AP5 both had mechanical wireways, [182] but the AP5 had a greater amount?

A. Yes.

Q. Could you give us your best judgment as to the relative proportions of the mechanical wireways on the AP2 and the AP5 on a percentage basis?

A. That would be rather hard to do without a detailed study of the plan, but an estimate would be about 200 per cent more.

Q. On the AP5?

A. On the AP5. The AP2 installation would be confined to the living quarters basically, whereas the AP5 had the quarters extended through a greater portion of the vessel and required such protection to a greater extent.

Q. Mr. Wanless, are you familiar with the use of the term "base vessel"?           A. Yes.

Q. What is the meaning of that term as used by the Commission?

A. When we make a design it has a designation such as the vessel in question "AP." That becomes a base vessel and all our estimates, both for weight and cost, et cetera, are based upon such a base vessel.

Q. Is the base vessel the same in the AP2 and the AP3?

A. No. There we knew a difference in machinery that would arise, as we did on the AP4, so an indi-

(Deposition of Ivan Joyce Wanless.)

vidual base cost [183] was established for each of those three types of ship.

Q. Is the base vessel on the AP2 the same as the base vessel on the AP5?

A. Yes, the AP5 had two base vessels, the AP2 and the AP3.

Q. Would the AP5 be in effect either an AP2 or an AP3 base vessel with conversion features typical of the AP5?

A. That is correct, except that the AP3 conversion was to have been called AP6.

Q. How would you characterize the base vessel of the AP series?

A. It is a cargo vessel, having approximately 14,600 tons deadweight, around 500,000 cubic feet cargo capacity; five holds, with machinery capable of 15 knots or better, depending upon the type of machinery installed, with normal type of cargo handling and accommodations for a merchant crew of approximately 50.

Q. With further reference to your experience and qualifications, did you testify that you served three years with the Navy Department, Bureau of Ships?

A. Yes, sir. I was three years with the Preliminary Design Section of the Bureau of Ships.

Q. Are you familiar with the Navy design designations? A. Yes, sir.

Q. I will ask you again if the Maritime Commission "AP" as used in the Maritime Commission designation VC2-S-AP2, [184] AP3, AP4 and AP5

(Deposition of John Bassette Maher.)

has the same meaning as the letters "AP" appearing in the Navy designation "APA"?

A. None whatsoever.

Mr. Pentz: Will you agree that answer may be stricken?

Mr. Walkup: Yes.

Mr. Pentz: I object to the question on the ground that there has been no foundation laid to qualify Mr. Wanless as an expert in the United States Navy insofar as their designations are concerned, and on that ground I object to the question as calling for a conclusion.

Mr. Walkup: I will withdraw the question and ask further questions relating to qualifications.

Q. (By Mr. Walkup): What type of work did you do during the three years in the Navy Bureau of Ships Design Section?

A. I did basic design work on all classes of Naval vessels, covering both auxiliaries and combatant type vessels, similar to the type of work I am doing in the Maritime Commission.

Q. Did your work in that capacity cause you to become familiar with the Navy vessel designations?

A. Yes, indeed. We designed all types, and in preparing such designs we had to label the proper designations.

Q. Do you know the meaning of the Navy symbol APA?      A. Yes, indeed. [185]

Q. Will you now state whether the use of the letters "AP" appearing in the Maritime Commission designation VC2-S-AP2 to and including AP5

(Deposition of John Bassette Maher.)

has the same meaning as the letters "AP" appearing in the Navy designation "APA"?

Mr. Pentz: I object to the question on the ground Mr. Wanless has not been properly qualified as an expert insofar as the meaning of U. S. Navy ship designations is concerned, and on that ground I object to the question as calling for his conclusion.

Mr. Walkup: Will you answer the question, please?

A. None whatever. As I previously stated, we deliberately endeavored to avoid conflict with Navy designations and that is why "AO" was not used. "AP" was selected while I was not here and it became a matter of record and I approved it after I came back, not knowing the vessels would go to the Navy.

Q. (By Mr. Walkup): You say while you were not here; do you mean during your temporary absence from the Commission?

A. That is correct. I was out of town for a day when the request came for a design designation to be given to this new cargo vessel, the Victory type, and we had deliberately omitted the AO design so as not to confuse with the Navy tankers which are designated AO.

Mr. Walkup: I would like to offer in evidence Plaintiff's [186] Exhibit HH for identification.

(The document heretofore marked Plaintiff's Exhibit HH for identification was offered in evidence as Plaintiff's Exhibit HH.)

Mr. Walkup: No further direct examination.

(Deposition of Ivan Joyce Wanless.)

Cross-Examination

By Mr. Pentz:

Q. Mr. Wanless, I believe you testified in substance that you or your department had charge of making the plans to meet the requested characteristics for the vessel known as VC2-S-AP5. Is that correct?

The Witness: Will you repeat the question, please?

(Pending question read.)

A. The preliminary design plans were the ones that we prepared; they are a necessary prerequisite to the preparation of final design plans and working drawings.

Q. When you make those plans, Mr. Wanless, you make them to fit with characteristics you want to incorporate in a ship? A. That is correct.

Q. Were there certain characteristics you wished to incorporate in the ship more commonly known as AP5? A. There were.

Q. Who decided what those characteristics should be?

A. We had a directive received from the Joint Chiefs [187] of Staff to make certain commercial tonnage available and it was finally decided that the Victory type ship could probably be best altered with least harm to its future commercial possibilities to meet the requirements of installing the Navy personnel and other features such as boats and guns.



(Deposition of Ivan Joyce Wanless.)

Q. You say it was finally decided. Who decided it?

A. I believe that decision rested with Admiral Vickery.

Q. Admiral Vickery at the time was Chairman of the Maritime Commission?

A. He was Vice Chairman and in charge of the building program.

Q. Insofar as the characteristics that these vessels should have, and I have reference to the VC2-S-AP5's, what conversations, if any, did you or your department have with representatives of the United States Navy?      A. Quite a few.

Q. Did these conversations have to do with the characteristics to be incorporated in an AP5?

A. Yes.

Q. I wish you would state in substance all you know about those conversations.

Mr. Walkup: I object to this as no proper foundation has been laid.

Mr. Pentz: Withdraw the question. [188]

Q. (By Mr. Pentz): Were you present during times when there were conversations between representatives of the United States Navy and representatives of the Maritime Commission concerning the characteristics which should be incorporated in the AP5 type vessel?      A. Yes.

Q. Where did that take place?

A. All over the United States.

Q. Will you relate what you can insofar as your

(Deposition of Ivan Joyce Wanless.)

recollection of what the general substance of those conversations was?

Mr. Walkup: I still object to that. There is no proper foundation laid as to any particular conversation; no showing of the times, places, and persons present.

Q. (By Mr. Pentz): Mr. Wanless, tell me the time of the first conversation that you can recall.

A. It was sometime the latter part of October, 1943.

Q. And where did it take place?

A. In the Maritime Commission.

Q. And who were present, as well as you recall?

A. Well, I can name Captain Sledge of the Navy, for one; James L. Bates; I am not certain if Admiral Vickery was there; Mr. Rohn, [189] probably.

Q. What was discussed between the gentlemen at that time and place concerning the characteristics that should be included in the AP5 type vessel?

A. The first conversation that we had the Navy presented a list of characteristics of a cargo type ship which they had converted themselves, and requested our opinion as to whether we could provide such additional installations on our AP2 or AP3. They preferred the AP3 type vessel.

Q. Do you have in your present custody the list of characteristics that the Navy presented to you that you refer to?

A. I do not believe that is readily available, as those figures are things of the past and have been stored God knows where.

(Deposition of Ivan Joyce Wanless.)

Q. Tell us as well as you can some of the principal features of these characteristics that were then presented.

A. The principal features were accommodations for an increased number of crew to man the vessel.

Q. About how much increase, do you recall?

A. From about 50 to about 250 to 275; provisions for berthing some 1,500 officers and troops and a change in the type of lifeboats and provision for storing on the hatches tank vehicles, and a change in cargo gear necessary to handle the heavier loads.

I mentioned earlier an increased standard of subdivision [190] and the provision of certain Navy communications features, such as radio, radar; and one of the requests was the adoption of Navy standards in many features, which was denied vigorously because this was still a commercial vessel and built for commercial requirements.

Q. Are you familiar with the provisions of a Federal law passed June 17, 1943, designated as 57 Stat. 156?

A. I am not a lawyer.

Q. Would you mind answering the question, please? I didn't ask you whether you are a lawyer.

A. I am not familiar with said law.

Q. I will read it to you:

“Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the President of the United States is hereby authorized to acquire or to undertake the construction of 1,000,000 tons of auxiliary vessels of such size,

(Deposition of Ivan Joyce Wanless.)

type and design as he may consider best suited for the purposes of the prosecution of the war, such facilities to be in addition to those heretofore authorized.

“Section 2. Notwithstanding the provisions of any other law, any vessel intended for operation by the United States Navy, the construction or acquisition and conversion of which was heretofore or is [191] hereafter authorized by the Maritime Commission, the War Shipping Administration, or any other agency of the Government, shall be subject to the approval of the Navy Department in all matters of design and construction or conversion and the control, custody and sole right to possession of such vessel shall be transferred to the Navy Department upon the completion of such construction or conversion. Provided, That the authority contained in this section shall be limited to the tonnage authorization contained in Section 1 hereof and to similar authorizations heretofore or hereinafter acquired.

“Section 3. There is hereby authorized to be appropriated out of any money in the Treasury not otherwise appropriated such sums as may be necessary to effectuate the purpose of this Act.”

That law is commonly known as Public Law 76. Directing your attention more particularly to that portion of the language I have read, “Notwithstanding the provisions of any other law, any vessel



(Deposition of Ivan Joyce Wanless.)

intended for operation by the United States Navy, the construction or acquisition and conversion of which was heretofore or is hereafter authorized by the Maritime Commission, the War Shipping Administration, or any other agency of the Government, shall be subject to the [192] approval of the Navy Department in all matters of design and construction or conversion."

Does that law come to mind to you now?

A. No, sir.

Q. Did you in your capacity on behalf of the Maritime Commission design the AP5 vessel without knowledge of the existence of that law?

Mr. Walkup: Just a moment. Would you read the question back, please?

(Pending question read.)

I object to that on the ground it is incompetent, irrelevant and immaterial.

Mr. Pentz: You may answer it, subject to Mr. Walkup's objection.

A. I have no knowledge of that law.

Q. (By Mr. Pentz): What further, if any, characteristics were contained in the list of desired characteristics for the AP5 type vessel that you have previously identified as having been handed to you or to members of your department?

A. Well, the general list runs: A certain amount of accommodation; certain provision for battery; for boats; for cargo stowage; for stores and for cruising radius; for water supply, and I mentioned communications before, and that covers in general



(Deposition of Ivan Joyce Wanless.)

the broad field, unless you want to get down [193] to pots and pans and equipment and outfit which is stored on the vessel, which the Navy supplied.

Q. I am only interested in the important features.

Now, there were changes from time to time thereafter in connection with these desired characteristics by the Navy, were there not?

Mr. Walkup: I object to the form of the question. What do you mean by "thereafter"? Would you clarify that point?

Mr. Pentz: When I used the word "thereafter" I had reference to the time you had testified to when the Navy first presented its desired characteristics for the vessels.

A. The desired characteristics were never accepted by the Maritime Commission.

Q. (By Mr. Pentz): What portion of the characteristics that were originally desired by the Navy Department were modified?

A. The berthing and troop capacity.

Q. Let's take them one at a time. The berthing and what? A. Troop capacity.

Q. To what extent was the Navy's original request changed?

A. Reduced about ten per cent.

Q. Very well. You may proceed. [194]

A. The cargo capacity likewise was reduced to that amount or perhaps a little bit more.

The request for the use of Navy standards in equipment, outfit and other matters which would

(Deposition of Ivan Joyce Wanless.)

require change from a commercial vessel were denied.

Q. What do you mean "changed to Navy standards"? What do you have reference to?

A. The Navy Department has certain standards regarding structure; wiring; they had a certain type of winches; connection boxes; switch gear; condenser heads; forced draught control; and similar things of that nature which, if we would have changed, would abrogate the requirements of the Merchant Classification Societies and destroy the future usefulness of the vessel as a commercial vessel, so consequently the changes were refused.

Q. You have listed a series of categories of items that you in your terminology have referred to as Navy standards. Let's take them one at a time, and I want you to tell me to what extent in each category the Navy's original request for characteristics was not used in the AP5 design.

A. We did not use Navy structural standards for the design of the additional bulkheads, deck-houses and other steel work, but followed the rules of the American Bureau of Shipping.

Q. So far as that is concerned, though, you [195] did incorporate in the features of the AP5 vessel the facilities for the type of compartment that the Navy desired?

A. Yes; we provided the facilities and then arranged to take them off without hurting its future use.

Q. What features of the characteristics requested

(Deposition of Ivan Joyce Wanless.)

by the Navy Department were eventually retained in the form of the completed AP5 vessel?

A. May I ask for a clarification of that question? Do you mean what was added to the vessel——

Q. I will make this statement in order to help clarify the matter:

You have testified that the Navy Department—in substance you have testified that the Navy Department came to the United States Maritime Commission and asked that certain characteristics be incorporated in an AP5 type vessel. Tell me, if you will, please, which of the characteristics they requested were eventually retained as a part of an AP5 vessel?

A. Features necessary for a Navy operation, such as installation of the crews' quarters and the change in boats; the changes in the handling gear; the changes in communication, such features which were necessary for the limited Navy operation.

Q. Am I to believe that in the preparation for the plans for this vessel you followed Naval requests in connection with those features of the [196] vessel?

A. Only those that were added or furnished by the Navy.

Q. What do you mean by "only those that were added or furnished by the Navy"?

A. We couldn't get any Navy material and consequently if the Navy was willing to furnish it, like radar, why, we arranged for the installation of it, but insofar as changing a great deal of the basic

(Deposition of Ivan Joyce Wanless.)

wiring, piping, et cetera, to conform to Navy practices, we did not do that.

Q. I am asking what you did conform to the Navy's request?

A. That which we put into the vessel; Navy berths, Navy mess gear, Navy ranges in the new galley, Navy boats; of course, Navy type bins, shelving and other storage facilities.

Q. Have you exhausted your information on what features of these vessels were——

A. No, there are about 2,300 odd items that you could name that you could put in one or put in the other and take it out again.

Q. Have you any knowledge as to the manner in which the AP5 type of vessel stowed small boats?

A. Yes, sir. They had triple back davits; I forget now from memory whether there were four or six in all, plus several more on the hatches, and then they had two LCM's [197] in addition to the LCVP's which were stowed in the landing boat davits——

Q. What do you mean by "LCM"?

A. Landing craft medium.

Q. And what do you mean by "LCVP"?

A. Landing craft vehicle and personnel.

Q. About how long an outfit, roughly speaking, is an LCM?

A. An LCM weighs 30 tons and is approximately 50 feet long and 12 to 14 feet wide.

Q. Did the Navy request that as one of the features of the AP5 that there be facilities on such a



(Deposition of Ivan Joyce Wanless.)

vessel for the stowage of LCM's? A. Yes, sir.

Q. Describe the extent that that feature was incorporated in an AP5 type.

A. Brackets were placed on deck abreast the hatches and arranged to form a cradle so that the LCM could be dropped into the cradle and lashed in place while at sea and was lifted off by the cargo boom.

Q. Did the Navy request that you incorporate as a part of the characteristics for an AP5 vessel facilities for the stowage of LCVP's?

A. Yes.

Q. Will you please describe what that characteristic [198] of the AP5 was?

A. Several of them were stowed similarly to the LCM's. The balance were stowed under special design Navy type which the Navy furnished, which was merely welded to the deck and carried two boats within its cradle and one stowed in between so it could be lifted out after the other boats were out.

Q. Did the United States Maritime Commission incorporate any characteristics in the AP5 type vessel to accommodate the placement of guns?

A. Yes, sir.

Q. The United States Navy requested that guns be placed in particular positions on the ship, did it not?

A. Yes, sir; they specified them on all types, AP2's, AP3's and AP5's.

Q. And, as a matter of fact, it is true that the



(Deposition of Ivan Joyce Wanless.)

position of guns was changed from time to time before the final plans and specifications were complete?      A. That is true.

Q. And those changes were accomplished as a result of a request therefor by the United States Navy; is that not true?      A. That is correct.

Q. Is it not true that these other characteristics of an AP5 vessel requested by the Navy were in turn changed from time to time at the request of the United States Navy?

A. No, not the major ones involving the basic ship, [199] which I stated was on structure, and other wiring, piping, et cetera, were not changed.

Q. You are quite positive of that?

A. I am quite positive.

Q. Would you consider quarters for the entire officer-personnel of an AP5 as a minor change?

A. The way it was done, yes, because we merely added a deckhouse and reassigned the rooms in the existing deckhouse.

Q. Are you quite positive the only change during the course of the final preparation of an AP5 plans and specifications, that the only change insofar as the quartering of officers was the erection of a deckhouse, or whatever you last said?

A. You didn't let me finish; the additional deckhouse plus the rearrangement and reassignment of rooms inside; the furniture was changed, which the Navy supplied in general, and a couple of partitions were removed.

Q. Are you quite sure that is the full extent?

(Deposition of Ivan Joyce Wanless.)

A. Well, the lighting, et cetera, had to be modified to suit. I mean when you put it back again you can use the same lighting you have, so that is why we acquiesced.

Q. Would it refresh your recollection if I call your attention to the fact that originally the quarters for officers were in a position in the ship quite deep? By that [200] I mean below the water line.

A. Mr. Pentz, I know of no vessel which has quarters for officers or crew below the water line.

Q. Would it refresh your recollection if I ask you is it not a fact that the United States Navy found that condition to be true and requested the United States Maritime Commission that the plans and specifications be changed so that those crew and officer quarters would be taken to an upper part of the ship?

Mr. Walkup: I object to the form of the question; it is complex and calls for a conclusion and opinion of the witness.

Q. (By Mr. Pentz): I will ask you, Mr. Wanless, whether or not there was ever a time when the United States Navy requested the United States Maritime Commission to incorporate in the AP5 plans and specifications quarters for officers in a higher position in the ship than that position which was originally designated?

Mr. Walkup: "To the witness' knowledge," Mr. Pentz, would you add that?

Mr. Pentz: If you know?

A. The officers' quarters in the AP5 design were

(Deposition of Ivan Joyce Wanless.)

in the same location as in the AP2 design, and those officers' quarters are above the main deck level. [201]

Mr. Pentz: Will you repeat the question? And I will ask you, Mr. Wanless, to try and answer the question.

(Thereupon the following question was read by the reporter:

"I will ask you, Mr. Wanless, whether or not there was ever a time when the United States Navy requested the United States Maritime Commission to incorporate in the AP5 plans and specifications quarters for officers in a higher position in the ship than that position which was originally designated, if you know?")

The Witness: Designated by whom?

Q. (By Mr. Pentz): I meant by that yourself, Mr. Wanless?

A. No, sir. The quarters as completed in the vessel were the same as were laid out on the preliminary plans; the same relative locations with minor changes.

Q. Is it a fact that the quarters for officers were changed at the request of the United States Navy because where they had originally been designated to be by the United States Maritime Commission there were not ample facilities for ventilation?

A. Not to my knowledge, and I was very intimate with the design at that stage.

Q. What do you know about the placing of 3-inch gun [202] mounts in connection with the final AP5 plans and specifications?

(Deposition of Ivan Joyce Wanless.)

A. Three-inch gun mounts were placed two forward and two aft at the quarterpoints. They were moved slightly after the rigging arrangement was known and they were moved fore and aft or inboard or outboard slightly, and later on certain supplemental platforms were built on to take care of directors and the radar equipment for the 40-millimeter guns.

Q. That was at the request of the United States Navy?

A. Yes, the Commission having no control over armament.

Q. Mr. Wanless, Mr. John Bassette Maher, of the Division of Accounts, United States Maritime Commission, has testified in these proceedings that the approximate estimated cost of the conversion features of 22 AP5 type vessels was \$34,213,000. With that statement in mind, are you confident that you have given us all of the structural features and characteristics of the AP5 type vessel which distinguishes it from the other AP type vessels?

A. I believe I have, although I have nothing to do with the cost itself and have no knowledge of the costs.

Q. How many times offhand or approximately would you say that you or your department, members thereof, consulted with representatives of the United States Navy concerning the features of these facilities desired by the United States Navy? [203]

A. We probably had in the beginning of the design seven or eight major conferences, among which



(Deposition of Ivan Joyce Wanless.)

you might call a meeting of the staff officers, and then there were many, many conferences, 50 or 60, et cetera, among one or more members of the Commission with one or more members of the Navy handling some particular feature.

Q. In the first seven or eight conferences that you described as more or less staff conferences between representatives of the two agencies, am I correct in presuming that the over-all characteristics desired by the Navy in this AP5 type vessel were discussed? A. That is correct, sir.

Q. And am I correct in assuming that in those meetings the representatives of the United States Navy made their requests as to these over-all features that they desired to be incorporated in the AP5's? A. They did, sir.

Q. Am I correct in assuming that the various and sundry meetings that you have mentioned as having occurred after that time, with persons in lower rank in the respective organizations, had to do with changes of more a minor nature than were requested by the Navy? A. Yes, sir.

Mr. Pentz: I would like about a five-minute intermission.

(Thereupon, a short recess was had.) [204]

Q. (By Mr. Pentz): Now, Mr. Wanless, referring your attention to the preliminary eight meetings, or thereabouts, that you have referred to as having taken place between the higher ranking officers of the United States Maritime Commission and the United States Navy concerning these AP5's,



(Deposition of Ivan Joyce Wanless.)

can you tell us roughly over what period of time these meetings took place?

A. The first information I have in my file is in the latter part of October and it was the first of November of that year.

Q. Of what year?

A. 1943, that the design was assigned and the conferences regarding the major characteristics and policies continued, I would say, until the middle of January or first of February at intervals about each two weeks.

Q. And by the first of January or February you mean 1944?           A. 1944.

Q. Were you present at any of those meetings?

A. Practically all of them, sir.

Q. At any of those meetings did a representative or representatives of the United States Navy acquaint you with the purposes for which the Navy intended to use this proposed vessel?

Mr. Walkup: Object to as no proper foundation having [205] been laid.

Mr. Pentz: You may answer it subject to Mr. Walkup's objection.

A. I was told they were to be used by the Navy——

Mr. Pentz: Just answer it yes or no.

May we have that question read back?

(Thereupon, the following question was read by the reporter:

“At any of those meetings did a representative or representatives of the United States

(Deposition of Ivan Joyce Wanless.)

Navy acquaint you with the purposes for which the Navy intended to use this proposed vessel?")

A. Yes.

Q. (By Mr. Pentz): When was the first meeting, if you can recall, to the best of your recollection, that that subject was mentioned?

A. My first recollection or record is October 26 at which time the Navy Department had already contacted Admiral Vickery regarding the use, and I was informed through Admiral Vickery to attend this meeting for this conversion.

Q. Where did the meeting take place, if you recall?

A. I believe in Admiral Vickery's conference room, 4834 of the Commerce Building.

Q. And as well as you remember, who were present?

A. I already stated those that I could remember. [206]

Q. What was said, as well as you recall, in substance, concerning the purpose for which the United States Navy desired these?

A. They wanted these vessels to be converted similar to some they had done themselves, and furnished us plans for guidance, together with the specifications of the alterations they had made to those other vessels.

Q. What was said, if anything, concerning the purpose they wanted to use those vessels for?

A. They wanted to use them as transports for advanced work purposes.

(Deposition of Ivan Joyce Wanless.)

Q. Were you informed at that meeting by any representative, or representatives, of the United States Navy, what was meant by "advanced work purposes"?

A. Yes. They were to carry or transport a division of troops, which was then designated as a combat division. In other words, it was merely a unit which worked together on land and was transported by these vessels on sea, the same as any other service.

Q. Were you further informed at that meeting by any representative of the United States Navy any more detail as to how these ships were to operate than what you have just said?

A. Operational plans were discussed and had been discussed previously, but I don't feel that I am qualified or [207] in a position to state information that was then classified as secret and still classified as confidential.

Q. I will ask you to relate what conversations you heard at that time concerning the use to which the United States Navy was to place those vessels?

Mr. Walkup: Off the record.

(Then followed a discussion off the record.)

Mr. Pentz: I will withdraw that question.

Q. (By Mr. Pentz): At that conference representatives of the United States Navy did discuss the nature of the use to which they proposed to place AP5 type vessels? A. Yes.

Q. To what extent are you willing to relate those conversations?

(Deposition of Ivan Joyce Wanless.)

A. The conversion was to be undertaken on the ground that these were not to be combatant vessels——

Mr. Pentz: Just a minute. I am going to move to strike that answer because the question calls for conversations as well as you can recall. Perhaps we should have the question repeated.

(Thereupon, the following question was read by the reporter:

“To what extent are you willing to relate those conversations?”) [208]

Mr. Pentz: I move to strike the answer as not being responsive to the question.

Now, will you read the question?

(Thereupon, the following question was read by the reporter:

“To what extent are you willing to relate those conversations?”)

Mr. Pentz: Let's have the question before that so we will know what conversations we are talking about.

(Thereupon, the following testimony was read by the reporter:

“Question: At that conference representatives of the United States Navy did discuss the nature of the use to which they proposed to place AP5 vessels? Answer: Yes.

“Question: To what extent are you willing to relate those conversations?”)

A. The conversations between Admiral Vickery

(Deposition of Ivan Joyce Wanless.)

and I am not certain who the Navy Admiral was, related to the fact that the vessels were to be used to transport a combat team to an advanced theater, together with its landing equipment, but that they were not to be considered in the combat category, following Navy standards of Navy basic design principles as far as Navy hull structure and machinery was concerned. It was on this basis only—— [209]

Q. (By Mr. Pentz, interposing): Are you still relating conversations?

A. I am still relating conversations—that Admiral Vickery agreed to accept the conversion of the vessels under contract and said that he would inform the Joint Chiefs of this decision.

Q. When you refer to the transport of a combat team to an advanced area, did not the purport of the conversation indicate that what was meant by that was the transport by the United States Navy of a combat team to a forward area?

A. I believe I so stated.

Q. Now, Mr. Wanless, tell us the extent of the armament aboard an AP5 as well as you know it.

Mr. Pentz: I will withdraw that question and reframe it in the following manner:

Q. (By Mr. Pentz): I appreciate, Mr. Wanless, that you are not testifying with the benefit of your records before you, and I therefore ask you to the best of your recollection, tell us the armament features of an AP5.



(Deposition of Ivan Joyce Wanless.)

A. 1 5-inch/38 double purpose aft.

4 3-inch AA guns.

I believe 4 40-millimeter AA guns.

12 20-millimeter guns, subsequently increased to 20. I might be wrong on the last. [210]

Q. Could you be wrong on the matter of the number and placement of the 5-inch/38 double guns?

A. I could be, but to the best of my knowledge I am correct.

Q. Do you know whether or not there was that type of armament located on the bow?

A. I do not believe a 5-inch gun was placed on the bow.

Q. Isn't it a matter of fact that one of the last changes that was made, at Navy request, was the placement of one 5-inch/38 double weapon on the bow?

A. I am not aware of that change.

Mr. Pentz: No further questions.

### Redirect Examination

By Mr. Walkup:

Q. Mr. Wanless, I neglected to ask you this at the outset of the deposition: Have you been designated by the Chairman of the United States Maritime Commission as one of the persons to give certain testimony in these proceedings on his behalf?

A. I was so designated.

Q. You have testified on cross-examination with reference to certain conferences at which you were present between Maritime Commission and Naval

(Deposition of Ivan Joyce Wanless.)

officers. Subsequent to those conferences, as a result thereof, was there any change made in what you have described as the base vessel of the [211 & 212] AP2 or AP3 in converting it into an AP5?

A. No, sir.

Q. Were there any gun emplacements on the AP2 vessels? A. Yes, sir.

Q. And to what extent?

A. I believe the AP2's were equipped as most cargo standard vessels were at that time, with one 5-inch, two or four 3-inch, and six 20-millimeter guns.

Q. In your cross-examination you mentioned a conversation in Admiral Vickery's office at which a statement was made to the general effect that the AP5's were not to be considered in the combat category, or testimony to that general substance and effect. Will you please state by whom that was said and to whom, at this meeting?

Mr. Pentz: I would like to hear that question, and I intend to interpose an objection to it. Will you please read the question?

(Thereupon, the following question was read by the reporter:

"In your cross-examination you mentioned a conversation in Admiral Vickery's office at which a statement was made to the general effect that the AP5's were not to be considered in the combat category, or testimony to that general substance and effect. Will you please

(Deposition of Ivan Joyce Wanless.)

state by whom that was said and to [213] whom, at this meeting?")

Mr. Pentz: I am going to object to that question on a number of grounds:

First, whatever testimony Mr. Wanless gave on that point was not responsive to the question propounded to him and was a voluntary statement of his own; further, that in any event the nature of the question seeks to elicit from Mr. Wanless a conclusion.

'That is my objection.

Mr. Walkup: You may answer subject to the objection.

A. I do not remember who the Admiral was with whom Admiral Vickery had the conversation, but that was the agreement.

Mr. Pentz: I move to strike Mr. Wanless' voluntary interpretation and statement "that was the agreement."

The Witness: I said that was with whom he had the agreement.

Mr. Pentz: In order to get this entirely accurate, would you mind repeating Mr. Wanless' answer to Mr. Walkup's last question?

(Thereupon, the following answer of the witness was read:

"I do not remember who the Admiral was with whom Admiral Vickery had the conversation, but that was the agreement.") [214]

Mr. Pentz: I move that the words "but that was the agreement" be stricken as a voluntary state-

(Deposition of Ivan Joyce Wanless.)

ment on the part of Mr. Wanless, as his conclusion; it constitutes his interpretation.

Q. (By Mr. Walkup): Referring further to this conversation which Mr. Pentz asked about in his cross-examination, will you identify to the best of your present knowledge the persons present?

Mr. Pentz: I object to that question on the ground it has already been asked and answered.

Mr. Walkup: You may answer it again. We are trying to develop the facts.

A. May I ask if you mean Navy personnel primarily?

Q. (By Mr. Walkup): Well, I would like to have all of the people present, including Navy and Maritime.

Mr. Pentz: I object to Mr. Walkup's statement to the extent that it constitutes a further question, on the same ground as I have objected to his previous question.

Mr. Walkup: I will ask it again so that there will be no question as to what I am trying to develop.

Q. (By Mr. Walkup): Mr. Wanless, will you please state to the best of your present recollection the persons present at the meeting in Admiral Vickery's office concerning which you have testified in answer to questions directed to you by Mr. [215] Pentz, during cross-examination?

Mr. Pentz: I object to the question as having been heretofore asked and answered.

A. Vice Admiral Vickery; James L. Bates; E. S.

(Deposition of Ivan Joyce Wanless.)

Land, for a moment; Arthur C. Rohn; Ivan Wanless; Lieutenant William Weber. For the United States Navy: Captain A. Sledge; Captain Schuyler Pyne; Commander K. Romberg; Captain Barringer, and I still don't remember the name of the Admiral.

Q. (By Mr. Walkup): Is it your testimony, then, that there was another Navy Admiral present in addition to the Navy personnel you have identified?

Mr. Pentz: I object to that question on the ground that it is Mr. Walkup's interpretation of the testimony.

Mr. Walkup: I will reword the question.

Q. (By Mr. Walkup): You have stated that there was another Admiral present. Do you mean by that another Admiral in addition to Admiral Vickery and Admiral Land?

A. Yes; there was an Admiral representing the Navy Department.

Q. Could you identify Admiral Vickery and Admiral Land?

A. As representing the Maritime Commission, Vice Chairman and Chairman, respectively. [216]

Q. Could you identify Mr. Bates?

A. Mr. Bates is Chief of the Technical Bureau, the Director of the Technical Division.

Q. Of what?

A. The Maritime Commission.

Q. Could you identify Mr. Rohn?

A. Mr. Rohn and the others were staff members



(Deposition of Ivan Joyce Wanless.)

of the Maritime Commission, Lieutenant Weber being Admiral Vickery's aide.

Q. In the Maritime Commission?

A. In the Maritime Commission.

Q. Referring further to the conversation to which you have testified on cross-examination, in response to Mr. Pentz's question, relating to the conversation in Admiral Vickery's office, between whom was the conversation in which the statement was made in substance and effect that the AP5's were not to be considered in the combat category, or in substance and effect similar to that statement, as testified by you on cross-examination?

Mr. Pentz: I object to the question on the ground that any statement heretofore made by Mr. Wanless on that subject was a voluntary statement made by him, unresponsive to the question or questions propounded to him, and on the further ground that it calls for his interpretation and calls for his conclusions as to what took place. [217]

Mr. Walkup: You may answer that.

A. Admiral Vickery did the principal talking for the Maritime Commission, together with Mr. Bates. The principal talkers from the Navy were the Admiral, name unknown, and Captain Barringer and Captain Sledge.

Q. (By Mr. Walkup): Will you state, please, to the best of your present recollection, what was said, if anything, concerning the question of whether or not the AP5's under discussion were to be considered as in the combat category?

(Deposition of Ivan Joyce Wanless.)

Mr. Pentz: Just a minute. May I ask to have Mr. Walkup's previous question read?

(Thereupon, the following question was read by the reporter:

“Referring further to the conversation to which you have testified on cross-examination, in response to Mr. Pentz's question, relating to the conversation in Admiral Vickery's office, between whom was the conversation in which the statement was made in substance and effect that the AP5's were not to be considered in the combat category, or in substance and effect similar to that statement, as testified by you on cross-examination?”)

Mr. Pentz: Will you repeat his last question?

(Thereupon, the following question was [218] read by the reporter:

“Will you state, please, to the best of your present recollection, what was said, if anything, concerning the question of whether or not the AP5's under discussion were to be considered as in the combat category?”)

Mr. Pentz: I object to the question on the ground that it assumes something was said upon the subject in question, which factor has been preserved in this record due to a voluntary statement made by Mr. Wanless unresponsive to any question propounded to him by me, and I further object to it on the ground that it calls for a conclusion. That is my objection.

(Deposition of Ivan Joyce Wanless.)

Mr. Walkup: You may answer subject to the objection.

The Witness: May I ask for a reading of the question again, please?

(Thereupon, the following question was read by the reporter:

“Will you state, please, to the best of your present recollection, what was said, if anything, concerning the question of whether or not the AP5’s under discussion were to be considered as in the combat category?”)

A. They were stated to be not in the combat category, and that the rules of the American Bureau of Shipping and insofar as possible the requirements of U. S. Coast Guard [219] for cargo vessels were to be followed, which would not be the case if they were combatant ships.

Q. (By Mr. Walkup): By whom was that said?

Mr. Pentz: I wish to make the same objection as I did to the last question, as follows:

“I object to the question on the ground that it assumes something was said upon the subject in question, which factor has been preserved in this record due to a voluntary statement made by Mr. Wanless unresponsive to any question propounded to him by me, and I further object to it on the ground that it calls for a conclusion,”

and I would also like to have his answer repeated to the last question.

(Deposition of Ivan Joyce Wanless.)

(Thereupon, the answer of the witness was read as follows:

“They were stated to be not in the combat category, and that the rules of the American Bureau of Shipping and insofar as possible the requirements of U. S. Coast Guard for cargo vessels were to be followed, which would not be the case if they were combatant ships.”)

Mr. Walkup: Would you read my last question to which objection was registered? [220]

(Thereupon, the following question was read by the reporter:

“Q. By whom was that said?”)

A. That was the directive that Admiral Vickery gave to Mr. Bates and to the rest of the staff, including myself.

Q. (By Mr. Walkup): What, if any, discussion was there on that subject between the representatives of the Navy and the representatives of the Maritime Commission at the meeting?

Mr. Pentz: I wish to have my same objection registered, as follows:

“I object to the question on the ground that it assumes something was said upon the subject in question, which factor has been preserved in this record due to a voluntary statement made by Mr. Wanless unresponsive to any question propounded to him by me, and I further object to it on the ground that it calls for a conclusion.”

A. The matter was discussed at some length and

(Deposition of Ivan Joyce Wanless.)

the Navy acquiesced in that decision because of the necessity of obtaining the vessels at certain specified dates stipulated by The Joint Chiefs of Staff.

Mr. Pentz: I move to strike the entire answer as embracing Mr. Wanless' interpretation of such a conversation, if one did exist, and comprising conclusions. [221]

Let me hear the answer read back as I may want to enlarge upon my statement.

(Thereupon, the following answer was read by the reporter:

"The matter was discussed at some length and the Navy acquiesced in that decision because of the necessity of obtaining the vessels at certain specified dates stipulated by The Joint Chiefs of Staff.")

Mr. Penz: That is the end of my statement, then.

Q. (By Mr. Walkup): Mr. Wanless, I would like to state that frequently witnesses in describing a conversation state the conclusion rather than the fact. In other words, it is improper to state "they agreed" or something of that nature, from a technical legal standpoint.

What I am asking you to do, and I am making this statement so it will avoid asking it several times, is to state to the best of your present recollection what was said by the representatives of the Navy and what reply was made by the representatives of the Maritime Commission in the conversation in question, realizing, of course, that you will



(Deposition of Ivan Joyce Wanless.)

probably not have a verbatim memory at this time of what was actually said, but asking you to give your best present recollection of the conversations at this time.

Mr. Pentz: I object to the question. [222]

Mr. Walkup: That was not a question; that was a statement. I am now going to propound a question.

Mr. Pentz: Very well.

Q. (By Mr. Walkup): Referring again to the conversation under discussion, would you please state to the best of your present recollection what was said by the representatives of the Navy Department and the representatives of the Maritime Commission on the subject now under discussion?

Mr. Pentz: I object to that question as it has been already asked and answered and it has been already objected to.

I further object to the question because the subject matter to which it is addressed arose from a voluntary statement made by Mr. Wanless not in response to any question propounded by myself, and further on the ground it calls for a conclusion.

Mr. Walkup: You may answer subject to the objection.

A. Admiral Vickery told the Navy representatives that we would undertake the conversion on the ground that I previously mentioned, which grounds were determined after discussion by Admiral Vickery and the staff present ahead of time.

The Navy protested and desired certain changes,

(Deposition of Ivan Joyce Wanless.)

which I have previously stated the Commission would not agree to, and as previously stated, they acquiesced in order to receive delivery of the vessels. The confirming letter is in the file [223] and I can get it.

Mr. Pentz: I move to strike every part of the answer given by Mr. Wanless on the ground it constitutes his conclusion and interpretation of the conversation, if any such existed, and I further move that it be stricken on the ground that by his own admission in his answer he has indicated that his statements cannot be the best evidence in that there is correspondence existing bearing upon the subject.

Q. (By Mr. Walkup): Mr. Wanless, referring again to the conversation in question, and so as to meet objection which has been registered, I will ask you to please state if you can, to the best of your present recollection, what was said at the meeting in question by representatives of the Navy Department, and what was said by representatives of the Maritime Commission on the subject in question?

Mr. Pentz: I object to the question on the ground that it has at least twice and perhaps more been asked and answered, and on the further ground that the subject matter to which it is addressed was one resulting from a voluntary statement by Mr. Wanless, not made in response to any interrogation propounded to him by myself.

(Deposition of Ivan Joyce Wanless.)

Mr. Walkup: You may answer, subject to the objection.

A. The Navy Department requested the conversion of the AP2 vessels, which was the reason the meeting was called. [224] Admiral Vickery stated that the conversion could be undertaken only by retaining commercial standards wherever possible.

The Navy Department requested acceptance of certain Navy standards, which was denied.

The orders were given that these were not to be combat vessels and that the commercial standards, again, were to be followed wherever practicable.

Mr. Pentz: I move to strike the answer on the ground it does not purport to relate conversations even in the most remote substance; that it comprises Mr. Wanless' conclusions and interpretations.

Q. (By Mr. Walkup): You stated in your answer to the previous question that Admiral Vickery made a certain statement? A. Yes, sir.

Q. What reply was made to that statement by any representative of the Navy Department?

Mr. Pentz: I object to the question on the ground it has been substantially asked and answered on a number of occasions, and it concerns a subject matter arising from a voluntary statement of a conclusion which Mr. Wanless has suggested, not in response to any question propounded to him by myself.

Mr. Walkup: Do you remember the question?

The Witness: No. [225]

(Deposition of Ivan Joyce Wanless.)

Mr. Walkup: Will you read the question?

(Thereupon, the following question was read by the reporter:

“What reply was made to that statement by any representative of the Navy Department?”)

Mr. Prentz: I further object to the question on the ground there is nothing in the record to indicate that any statement was made by anybody.

Mr. Walkup: Will you read back Mr. Wanless' answer to the previous question when he referred to a statement made by Admiral Vickery?

(Thereupon, the following answer of the witness was read by the reporter:

“The Navy Department requested the conversion of the AP2 vessels, which was the reason the meeting was called. Admiral Vickery stated that the conversion could be undertaken only by retaining commercial standards wherever possible.

“The Navy Department requested acceptance of certain Navy standards, which was denied.

“The orders were given that these were not to be combat vessels and that the commercial standards, again, were to be followed wherever practicable.”)

The Witness: Will you repeat the question?

(Thereupon, the following question was read [226] by the reporter:

“What reply was made to that statement by any representative of the Navy Department?”)



(Deposition of Ivan Joyce Wanless.)

The Witness: The Navy Department stated that they would agree to such terms and conditions in order to obtain vessels at the stipulated required dates desired by the Joint Chiefs of Staff.

Mr. Pentz: I move to strike that answer on the ground it does not purport to relate a statement, but, on the other hand, is Mr. Wanless' conclusion.

Q. (By Mr. Walkup): Do you recall who made the statement on behalf of the Navy Department?  
A. The Admiral.

Q. And have you told us to the best——

Mr. Pentz: Wait a minute. I am sorry I have to have the opportunity to make the same objection to each of these questions as they proceed and I failed to have the opportunity in that last instance.

Will you read to me the question I didn't have an opportunity to object to?

(Thereupon, the last question was read by the reporter, as follows:

“Do you recall who made the statement on behalf of the Navy Department?”) [227]

Mr. Pentz: My objection to that question is, first, there is no evidence that any statement was made. If any there was it is designed to cover a subject matter which was gratuitously and voluntarily offered us by Mr. Wanless, not in response to any question propounded by me.

Is there a question pending now?

Mr. Walkup: I believe I started a question and you asked for the privilege to object, before I completed the question.



(Deposition of Ivan Joyce Wanless.)

Mr. Pentz: That being the case, perhaps you would care to reframe it, or continue, as you choose.

Q. (By Mr. Walkup): Have you told us to the best of your present recollection what was said by the Navy Admiral in response to the statement of Admiral Vickery, of the Maritime Commission, to which you have previously testified?

Mr. Pentz: I object to the question on the ground it has been substantially asked and answered a number of times, which now has grown to a point that I do not recall the number, and that it is designed to cover a subject matter voluntarily inserted by Mr. Wanless, not in response to any question propounded by myself.

Mr. Walkup: You may answer.

A. I have.

Q. (By Mr. Walkup): Mr. Wanless, you mentioned in your testimony some [228] difference between standards of the American Bureau of Ship Building and the Navy standards. Could you state in further explanation of that testimony the basic differences?

Mr. Pentz: Just a minute. Insofar as that question is designed, if it is, to refer to the subject matter covered by my previous objections, I object on the ground that it pertains to a subject matter voluntarily and gratuitously offered, not being in response to any interrogation propounded to Mr. Wanless by myself. Otherwise, I have no objection.

(Deposition of Ivan Joyce Wanless.)

Mr. Walkup: You may answer, subject to the objection.

A. The American Bureau of Shipping rules are promulgated to safeguard the insurance companies and designed to give vessels——

Mr. Pentz: Just a minute. Let me hear that question back again.

(Thereupon, the following question was read by the reporter:

“Mr. Wanless, you mentioned in your testimony some difference between standards of the American Bureau of Ship Building and the Navy standards. Could you state in further explanation of that testimony the basic difference?”)

Mr. Pentz: I object to that question on the ground it does not indicate any common factors upon which any comparison can be made of anything, and for that reason it is ambiguous [229] and uncertain.

Mr. Walkup: I will withdraw the question, in view of the objection.

Q. (By Mr. Walkup): I will ask the witness merely whether the——

Mr. Pentz: Excuse me; I further wish the record to show that in connection with the formation of this question Mr. Wanless has engaged in a whispered conversation of short duration with Mr. Walkup.

(Deposition of Ivan Joyce Wanless.)

Mr. Walkup: On that point I would like to state that the witness said to me that I had incorrectly described the American Bureau of Ship Building and that it should be the American Bureau of Shipping, and I believe the remark was directed also to the reporter's attention; was that correct?

The Witness: Yes; the remark was directed to the reporter. There is no such institution as the American Bureau of Ship Building.

Mr. Walkup: I was in error on that point.

Q. (By Mr. Walkup): I will now ask you, Mr. Wanless, if there is an American Bureau of Shipping? A. There is.

Q. And does the American Bureau of Shipping have a set of shipbuilding standards?

A. It does. [230]

Q. Do those standards to your knowledge differ in any material respects from the standards of the United States Navy shipbuilding standards?

A. They do.

Mr. Pentz: Just a minute. Will you stipulate that the answer may be stricken until I have the opportunity to object?

Mr. Walkup: Yes. It is my understanding that objections to the form of questions are reserved until the time of trial.

Mr. Pentz: I think you are correct. I object to that question on the basis that it calls for a conclusion of the witness in that it is obvious that if there is any distinction or difference at all between the two standards, the standards or rules themselves

(Deposition of Ivan Joyce Wanless.)

will furnish the best evidence of any such difference.

Mr. Walkup: You may answer the question. Would you read the question back?

(Thereupon, the following question was read by the reporter:

“Do those standards to your knowledge differ in any material respects from the standards of the United States Navy shipbuilding standards?

“Answer: They do.”)

Mr. Pentz: May I ask a question on voir dire, please?

Mr. Walkup: Please.

Mr. Pentz: These two standards you are speaking about [231] are compiled in written form, are they not, Mr. Wanless?

The Witness: The American Bureau is. The Navy is not, as I can explain.

Mr. Pentz: Therefore, I renew my objection to the question on the basis that whatever the rules are that are in writing furnish the best evidence for any comparison, and that Mr. Wanless' testimony by its response to this question will constitute his conclusion.

Mr. Walkup: I believe the question does not call for a comparison; merely a question as to whether or not differences exist.

You may answer the question, subject to the objection.

(Deposition of Ivan Joyce Wanless.)

The Witness: May I have the question read?

(Thereupon, the following question was read by the reporter:

“Question: Do those standards to your knowledge differ in any material respects from the standards of the United States Navy ship-building standards?”)

The Witness: The American Bureau rules are promulgated for the construction of cargo vessels, passenger vessels, and other merchant types and are codified and simplified so that most Naval Architects can determine the strength requirements, thickness of the plating, et cetera, according to the principal dimensions of the vessel.

The Navy standards, so-called, are a detailed calculation [232] of each and every member of the vessel in order to give requisite strength and the minimum weight.

This requirement of minimum weight also does not incorporate any corrosion factors which are placed in merchant vessels to allow for deterioration as said vessels are designed for a twenty-year life.

This results in a saving in structure of approximately 20 to 25 per cent should Navy standards be used in a design.

Mr. Pentz: I move to strike the answer on the ground that the purport of the answer depends upon a compilation of rules contained in a written form, and that, therefore, they themselves become



(Deposition of Ivan Joyce Wanless.)

the best evidence upon which to base any comparison; and that, therefore, Mr. Wanless' testimony comprises his own conclusions.

Q. (By Mr. Walkup): Mr. Wanless, on April 22, 1943, had the design AP5, and I refer now to the complete Maritime Commission designation VC2-S-AP5, been adopted by the Maritime Commission?

Mr. Pentz: I object to the question on the basis of the use of the word "adopted" in the sense that it calls for Mr. Wanless' conclusion.

Q. (By Mr. Walkup): To meet the objection, I will ask you if on April 22, 1943, the Maritime Commission symbol VC2-S-AP5 had been created and adopted by the Commission? [233]

Mr. Pentz: The same objection to it as I have to the former question.

Mr. Walkup: You may answer.

A. There was no AP5, that is, VC2-S-AP5 design in existence on April 22, 1943.

Mr. Walkup: I have no further questions.

Mr. Pentz: No questions.

Mr. Walkup: Mr. Notary, will you please instruct the witness that he may be dismissed and his attendance is no longer required in these proceedings?

The Notary Public: Very well. At 5:15 p.m., the witness was excused sine die.

/s/ IVAN J. WANLESS.

District of Columbia,  
City of Washington—ss.

I, John P. Labofish, a Notary Public within and for the District of Columbia, do hereby certify:

That prior to being examined the witness whose signature is affixed to the foregoing deposition was sworn by me to testify the truth, the whole truth and nothing but the truth;

That said deposition was taken down by Chloe S. MacReynolds, an official court reporter of the District Court of the United States for the District of Columbia, in shorthand, [234] at the time and place therein stated and was thereafter reduced to typewriting under her direction;

That Chloe S. MacReynolds, the Reporter, is a distinterested party to the cause;

That when reduced to typewriting the deposition was read by or to the said witness, who was duly informed by me of the right to make such corrections as might be necessary to render the same true and correct, and the same was thereupon signed by the said witness in my presence.

I further certify that I am not of counsel or attorney for either of the parties hereto or in any way interested in the event of this cause, and that I am not related to either of the parties thereto.

Witness my hand and seal this 28th day of November, 1947.

[Seal]      /s/ JOHN P. LABOFISH,

Notary Public Within and for  
the District of Columbia.

My commission expires Dec. 14, 1947.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK TO RECORD  
ON APPEAL

I, C. W. Calbreath, Clerk of the District Court of the United States for the Northern District of California, do hereby certify that the foregoing and accompanying documents and exhibits, listed below, are the originals filed in the above-entitled case and that they constitute the Record on Appeal herein, as designated by the Appellants, to wit:

Complaint for Damages for Breach of Contract, for Goods and Services, and Against Principal and Surety Upon Contract Performance Bond, Contains Exhibits A, B, C, D, E, F, G & H.

Answer of John Urquhart Birnie and Massachusetts Bonding and Insurance Company, a Corporation, Contains Exhibit A and Appendix "A."

First Amended Complaint for Payment of Money Due and Against Principal and Surety Upon Contract Performance Bond.

Answer to First Amended Complaint, Cross-Complaint and Counterclaim of John Urquhart Birnie and Massachusetts Bonding and Insurance Company, a Corporation, Contains Exhibit "A" and Appendix "A."

Answer of The Permanente Metals Corporation, a Corporation, to Counter Claim and Cross-Complaint of John Urquhart Birnie, an Individual Doing Business as Birnie Electric Company, and Massachusetts Bonding and Insurance Company, a Corporation.

Answer of Cross-Defendant United States Maritime Commission to Counter-Claim and Cross-Complaint of John Urquhart Birnie.

Order for Judgment.

Findings of Fact and Conclusions of Law.

Judgment.

Notice of Appeal.

Cost Bond on Appeal.

Designation of Contents of Record on Appeal.

Concise Statement of Points on Which Defendant, Cross-Complainant and Appellant John Urquhart Birnie, an Individual Doing Business as Birnie Electric Company, Intends to Rely on Appeal.

Concise Statement of Points on Which Defendant, Cross-Complainant and Appellant Massachusetts Bonding and Insurance Company, a Corporation, Intends to Rely on Appeal.

Reporter's Transcript for February 21 and 23, 1950.

Plaintiffs' Exhibits Nos. A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S,

T—Marked HH in Wanless Deposition,

U—Marked V in Maher Deposition,

V—Marked W in Maher Deposition,

W—Marked X in Maher Deposition,

X—Marked Y in Maher Deposition,

Y—Marked Z in Maher Deposition,

Z—Marked AA in Maher Deposition,

AA—Marked BB in Maher Deposition,

BB—Marked CC in Maher Deposition,

CC—Marked DD in Maher Deposition,

DD—Marked EE in Maher Deposition,

EE—Marked GG in Maher Deposition,  
FF,  
GG—Marked G in McDonald Deposition,  
HH—Marked P in McDonald Deposition,  
II—Marked S in McDonald Deposition,  
JJ—Marked 6 in McShane Deposition,  
KK—Marked C in McDonald Deposition,  
LL—Marked 7 in McShane Deposition,  
MM—Marked D in McDonald Deposition,  
NN—Marked A in McDonald Deposition,  
OO—Marked B in McDonald Deposition,  
PP—Marked K in McDonald Deposition,  
QQ—Marked L in McDonald Deposition,  
RR—Marked T in McDonald Deposition.

Defendants' Exhibits Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14 and 15.

Depositions on Behalf of Plaintiff and Cross-Defendant, The Permanente Metals Corporation, a Corporation—Depositions of John Bassette Maher, R. L. McDonald and Ivan Joyce Wanless.

Deposition of Ralph Edward McShane, etc.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court at San Francisco, California, this 9th day of December, A. D. 1950.

[Seal]

C. W. CALBREATH,  
Clerk,

By /s/ M. E. VAN BUREN,  
Deputy Clerk.



[Title of District Court and Cause.]

CERTIFICATE OF CLERK TO SUPPLEMENT  
TO RECORD ON APPEAL

I, C. W. Calbreath, Clerk of the District Court of the United States for the Northern District of California, do hereby certify that the foregoing and accompanying documents, listed below, are the originals filed in the above-entitled case, and that they constitute the supplement to the Record on Appeal herein, as designated by the Appellee, to wit:

Appellee's Designation of Contents of Record on Appeal.

Reporter's Transcript of Pre-Trial Conference, for January 4, 1949.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court at San Francisco, California, this 27th day of December, A. D. 1950.

[Seal]

C. W. CALBREATH,  
Clerk,

By /s/ M. E. VAN BUREN,  
Deputy Clerk.

---

[Endorsed]: No. 12766. United States Court of Appeals for the Ninth Circuit. John Urquhart Birnie, an Individual Doing Business as Birnie Electric Company and Massachusetts Bonding and Insurance Company, a Corporation, Appellants, vs. The Permanente Metals Corporation, a Corporation, and United States Maritime Commission, Appellees. Transcript of Record. Appeal from the United

States District Court for the Northern District of California, Southern Division.

Filed December 11, 1950.

/s/ PAUL P. O'BRIEN,  
Clerk of the United States Court of Appeals for the  
Ninth Circuit.

---

In the United States Court of Appeals  
for the Ninth Circuit

No. 12766

JOHN URQUHART BIRNIE, an Individual Doing Business as BIRNIE ELECTRIC COMPANY, and MASSACHUSETTS BONDING AND INSURANCE COMPANY, a Corporation,

Appellants,

vs.

THE PERMANENTE METALS CORPORATION, a Corporation,

Appellee.

JOHN URQUHART BIRNIE, an Individual Doing Business as BIRNIE ELECTRIC COMPANY, and MASSACHUSETTS BONDING AND INSURANCE COMPANY, a Corporation,

Appellants,

vs.

THE PERMANENTE METALS CORPORATION, a Corporation; UNITED STATES MARITIME COMMISSION, and JOSEPH

K. CARSON, RAYMOND S. McKEOUGH,  
ADMIRAL WILLIAM W. SMITH, GRAN-  
VILLE MELLON and RICHARD PARK-  
HURST, as Members of UNITED STATES  
MARITIME COMMISSION,

Appellees.

STIPULATION AND ORDER RE  
PRINTING OF DOCUMENTARY EXHIBITS

It Is Hereby Stipulated and Agreed by and be-  
tween the parties hereto, with the approval of this  
Honorable Court, that the documentary exhibits in-  
cluded in the record of this appeal, be printed or  
reproduced in a book of exhibits and that fifteen  
(15) copies of said book of exhibits be prepared.

HILL, FARRER & BURRILL,  
CRIDER, RUNKLE & TILSON,  
MELLIN, HANSCOM &  
HURSH,

/s/ JACK E. HURSH,  
Attorneys for Appellant.

/s/ FRANK J. HENNESSY,  
United States Attorney.

/s/ MAX THELEN,  
/s/ BRUCE WALKUP,  
Attorneys for Appellee.

## ORDER

The foregoing stipulation is hereby approved and it is so ordered.

Dated: January 4, 1951.

/s/ WILLIAM DENMAN,  
Chief Judge,  
U. S. Court of Appeals.

/s/ WM. E. ORR,  
/s/ WALTER L. POPE,  
Judges.

[Endorsed]: Filed Jan. 5, 1951.

[Title of Court of Appeals and Cause.]

DESIGNATION ON APPEAL UNDER RULE  
19 OF THE RULES OF PRACTICE OF  
THE COURT OF APPEALS FOR THE  
NINTH CIRCUIT

Now, Come John Urquhart Birnie, an individual doing business as Birnie Electric Company and Massachusetts Bonding and Insurance Company, a corporation, appellants herein, and hereby adopt the Designation of Contents of Record on Appeal, filed in the District Court and already a part of the record on appeal herein as their Designation on Appeal of the record to be printed, and further designate that all of the documentary exhibits on file herein be either reproduced or printed in the book of exhibits.

CRIDER, RUNKLE & TILSON,  
HILL, FARRER & BURRILL,  
MELLIN, HANSCOM &  
HURSH,

/s/ JACK E. HURSH,

Attorneys for Appellants.

Receipt of copy acknowledged.

[Endorsed]: Filed Dec. 29, 1950.



[Title of Court of Appeals and Cause.]

CONCISE STATEMENT OF POINTS ON  
WHICH APPELLANT INTENDS TO RELY

Now, Comes Appellant Massachusetts Bonding and Insurance Company, a corporation, and adopts the Concise Statement of Points on Which Defendant-Cross-Complainant and Appellant Massachusetts Bonding and Insurance Company, a Corporation, Intends to Rely on Appeal, filed in the District Court and already appearing as a part of the record on appeal herein as the Concise Statement of Points on Which It Intends to Rely on This Appeal.

/s/ CRIDER, RUNKLE & TILSON,  
Attorneys for Appellant.

Receipt of copy acknowledged.

[Endorsed]: Filed Dec. 29, 1950.

---

[Title of Court of Appeals and Cause.]

CONCISE STATEMENT OF POINTS ON  
WHICH APPELLANT INTENDS TO RELY

Now, Comes Appellant John Urquhart Birnie, an individual doing business as Birnie Electric Company, and adopts the Concise Statement of Points on Which Defendant-Cross-Complainant and Appellant John Urquhart Birnie, an Individual Doing Business as Birnie Electric Company, Intends to Rely on Appeal, filed in the District Court

and already appearing as a part of the record on appeal herein as the Concise Statement of Points on Which He Intends to Rely on this Appeal.

HILL, FARRER & BURRILL,  
MELLIN, HANSCOM &  
HURSH,

/s/ JACK E. HURSH,  
Attorneys for Appellant.

Receipt of copy acknowledged.

[Endorsed]: Filed Dec. 29, 1950.

---

[Title of Court of Appeals and Cause.]

STIPULATION SHORTENING CONTENTS  
OF PRINTED BOOK OF EXHIBITS

This Stipulation is entered into by and between all of the parties to this proceeding through their respective counsel as follows:

John Urquhart Birnie, an individual, doing business as Birnie Electric Company, Appellant, through his attorneys, Hill, Farrer & Burrill, formerly Hill, Morgan & Farrer, by Elliott H. Pentz;

Massachusetts Bonding and Insurance Company, a corporation, Appellant, through its attorneys, Crider, Runkle & Tilson, by Clarence B. Runkle;

The Permanente Metals Corporation, a corporation, Appellee, through Bruce Walkup, Willis S. Slusser, Thelen, Marrin, Johnson & Bridges, by Bruce Walkup; and

United States Maritime Commission, and Joseph K. Carson, Raymond S. McKeough, Admiral William W. Smith, Granville Mellon and Richard Parkhurst, as members of United States Maritime Commission, Appellees, through their counsel, United States Attorney, Frank J. Hennessy.

It Is Hereby Stipulated and Agreed by each and all of the parties aforesaid that the documentary evidence, exhibits and portions and excerpts therefrom as are hereinafter specified, comprise the only documentary evidence, exhibits and portions and excerpts therefrom as need be printed in the printed exhibit book in the appellate records and files of this case; it being the agreement and understanding of the parties hereto that such written documentary evidence, exhibits and portions and excerpts as are not herein specified (and hence need not be printed in said printed exhibit book) shall nevertheless be deemed for all purposes as a part of the record on appeal as fully and completely as though the same were printed in said printed exhibit book, and that the entire contents of the record on appeal in this proceeding as has heretofore been specified and designated in writing by appellants and appellees, be and remain as the record on appeal herein.

#### Exhibits Specified for Printing in Printed Exhibit Book

(The number and letter designators hereinafter used refer to the designators adopted by the District Court of the United States, for the Southern Division of California, Northern District, at the time of the trial of this action.)

1. Plaintiff's Exhibit B.
2. Plaintiff's Exhibit C.
3. Plaintiff's Exhibit M.
4. Plaintiff's Exhibit T.
5. Plaintiff's Exhibit DD.
6. Plaintiff's Exhibit EE.
7. Plaintiff's Exhibit FF.
8. Plaintiff's Exhibit GG.
9. Plaintiff's Exhibit II.

10. Plaintiff's Exhibit KK. As to this exhibit, it is agreed that it will only be necessary to print the memorandum and attachments A and B thereto. It is further agreed that it will not be necessary to print the proposed letter and attachments A, B, C and D thereto referred to in the memorandum, as the proposed letter referred to in the memorandum was actually sent and is included in this record on appeal as Plaintiff's Exhibit LL, dated November 14, 1945. It is further agreed that a notation to this effect should be included following the printing of the portion of Plaintiff's Exhibit KK, which is included in the printed book of exhibits.

11. Plaintiff's Exhibit LL. It is agreed that it will not be necessary to print the attachments to the letter, consisting of attachments A, B, C and D, but only the letter itself.

12. Plaintiff's Exhibit MM. It is agreed that it will only be necessary to print the memorandum, and that it will not be necessary to print attachments designated as Exhibits A and B to the memorandum. It is also agreed that it will not be necessary to print the proposed letter referred to in

the memorandum as this letter was sent and is included in the record on appeal as Defendant's Exhibit 9. It is further agreed that a notation should be made in the printed book of exhibits to that effect following the printing of the memorandum.

13. Plaintiff's Exhibit NN.
14. Plaintiff's Exhibit OO.
15. Defendant's Exhibit 1.
16. Defendant's Exhibit 2.
17. Defendant's Exhibit 3.
18. Defendant's Exhibit 4.
19. Defendant's Exhibit 5.
20. Defendant's Exhibit 6.
21. Defendant's Exhibit 7.
22. Defendant's Exhibit 8.
23. Defendant's Exhibit 9.
24. Defendant's Exhibit 10.
25. Defendant's Exhibit 11.
26. Defendant's Exhibit 12.
27. Defendant's Exhibit 13.

Any exhibits or portions or excerpts therefrom as are not specified herein for printing in the aforesaid printed Exhibit Book shall be available in their original form to the Court at the request of any party hereto, that reference thereto may be made in the briefs to any such exhibit, whether printed or not, and that the Court may, if it so desires, refer to all exhibits and portions and excerpts therefrom as are not printed, or any part or por-



tion thereof for such examination and consideration as to the Court may seem desirable.

Dated this 21st day of February, 1951.

HILL, FARRER & BURRILL, Formerly HILL,  
MORGAN & FARRER,

By /s/ ELLIOTT H. PENTZ,

Attorneys for John Urquhart Birnie, an Individual,  
d.b.a. Birnie Electric Company, Appellant.

CRIDER, RUNKLE & TILSON,

By /s/ CLARENCE B. RUNKLE,

Attorneys for Massachusetts Bonding and Insurance Company, a Corporation, Appellant.

BRUCE WALKUP,

WILLIS S. SLUSSER,

THELEN, MARRIN, JOHNSON  
& BRIDGES,

By /s/ BRUCE WALKUP,

Attorneys for The Permanente Metals Corporation,  
a Corporation, Appellee.

/s/ FRANK J. HENNESSY,

United States Attorney, Attorney for United States Maritime Commission, and Joseph K. Carson, Raymond S. McKeough, Admiral William W. Smith, Granville Mellon and Richard Parkhurst, as Members of United States Maritime Commission, Appellees.

## ORDER

Approved and It Is So Ordered this 21st day of February, 1951.

/s/ WILLIAM DENMAN,  
Chief Judge.

/s/ WM. E. ORR,  
/s/ WALTER L. POPE,

Judges, U. S. Court of Appeals for the Ninth Circuit.

[Endorsed]: Filed Feb. 23, 1951.

---

[Title of Court of Appeals and Cause.]

SUPPLEMENT TO STIPULATION SHORTENING  
CONTENTS OF PRINTED BOOK  
OF EXHIBITS

As a Supplement to Stipulation Shortening Contents of Printed Book of Exhibits, all of the parties to this proceeding through their respective counsel, hereinafter designated, agree as follows:

John Urquhart Birnie, an individual, doing business as Birnie Electric Company, Appellant, through his attorneys, Hill, Farrer & Burrill, formerly Hill, Morgan & Farrer, by Elliott H. Pentz;

Massachusetts Bonding and Insurance Company, a corporation, Appellant, through its attorneys, Crider, Runkle & Tilson, by Clarence B. Runkle;

The Permanente Metals Corporation, a corporation, Appellee, through Bruce Walkup, Willis S.

Slusser, Thelen, Marin, Johnson & Bridges, by Bruce Walkup; and

United States Maritime Commission, and Joseph K. Carson, Raymond S. McKeough, Admiral William W. Smith, Granville Mellon and Richard Parkhurst, as members of United States Maritime Commission, Appellees, through their counsel, United States Attorney, Frank J. Hennessy.

It Is Further Stipulated and Agreed by each and all of the parties aforesaid that no official certification of the United States Maritime Commission or the United States Navy, as may be attached to any of the exhibits in the record of this case certifying to the official character of any such exhibits by said governmental agencies, need be reproduced or printed in full, but that in lieu thereof it will be sufficient that the book of exhibits merely bear the notation in each such instance indicating that the document or exhibit in question was certified by the United States Maritime Commission or the United States Navy, as the case may be.

Dated this 21st day of February, 1951.

HILL, FARRER & BURRILL, Formerly, HILL,  
MORGAN & FARRER,

By /s/ ELLIOTT H. PENTZ,

Attorneys for John Urquhart  
Birnie, Appellant.

CRIDER, RUNKLE & TILSON,

By /s/ CLARENCE B. RUNKLE,

Attorneys for Massachusetts Bonding and Insurance Company, a Corporation, Appellant.

BRUCE WALKUP,  
WILLIS S. SLUSSER,  
THELEN, MARRIN, JOHNSON  
& BRIDGES,

By /s/ BRUCE WALKUP,  
Attorneys for the Permanente Metals Corporation,  
a Corporation, Appellee.

/s/ FRANK J. HENNESSY,  
United States Attorney, Attorney for United States  
Maritime Commission, and Joseph K. Carson,  
Raymond S. McKeough, Admiral William W.  
Smith, Granville Mellon and Richard Park-  
hurst, as Members of United States Maritime  
Commission, Appellees.

### ORDER

Approved and It Is So Ordered this 21st day of  
February, 1951.

/s/ WILLIAM DENMAN,  
/s/ WM. E. ORR,  
/s/ WALTER L. POPE,  
Judges, U. S. Court of Appeals for the Ninth Cir-  
cuit.

[Endorsed]: Filed Feb. 23, 1951.